By Mr. KEE: Joint resolution (H. J. Res. 560) to authorize acquisition of land for the Bluestone Reservoir project, and for other purposes; to the Committee on Flood Control.

By Mr. CRAWFORD: Joint resolution (H. J. Res. 561) requesting the Federal Trade Commission to investigate and report to Congress all facts pertaining to the publication of an advertisement in QST magazine profaning the office of the President; to the Committee on Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CROWE: A bill (H. R. 8939) granting an increase of pension to Vernon Stevens; to the Committee on Pensions.

By Mr. JENKINS of Ohio: A bill (H. R. 8940) granting a pension to Alexander Lane; to the Committee on Pensions.

By Mr. KNUTSON: A bill (H. R. 8941) for the relief of Agnes Brodahl; to the Committee on Claims.

Also, a bill (H. R. 8942) for the relief of Elsie Dushaw; to the Committee on Claims.

Also, a bill (H. R. 8943) granting a pension to William R. Ross; to the Committee on Pensions.

By Mr. LAMBERTSON: A bill (H. R. 8944) granting a pension to Annie E. Sutherland; to the Committee on Invalid Pensions.

By Mr. MARTIN of Massachusetts: A bill (H. R. 8945) granting an increase of pension to Mary H. Green; to the Committee on Invalid Pensions.

By Mr. TAYLOR of Tennessee: A bill (H. R. 8946) granting a pension to John A. Helms; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3767. By Mr. CLASON: Petition of Catherine A. Guilshan and other citizens of Springfield, East Longmeadow, and Ludlow, Mass., favoring the abolition of the privately owned Federal Reserve System and to restore to Congress its constitutional right to coin and issue money and regulate the value thereof; to the Committee on Banking and Currency.

3768. By Mr. FITZPATRICK: Petition of the Yankee Division, Veterans' Association, New York Chapter, profoundly and unalterably opposed to the Ludlow amendment in relation to a Nation-wide referendum to declare war; to the Committee on the Judiciary.

3769. By Mr. KEOGH: Petition of the American Newspaper Guild, New York City, concerning House bill 8239, providing for a permanent Bureau of Fine Arts; to the Committee on Education.

3770. By Mr. HANCOCK of New York: Petition of the Pomona Grange, Onondaga County, N. Y.; to the Committee on Agriculture.

3771. Also, petition of the Pomona Grange, Onondaga County, N. Y.; to the Committee on Ways and Means.

3772. Also, petition of the Pomona Grange, Onondaga County, N. Y.; to the Committee on Foreign Affairs.

3773. By Mr. MERRITT: Petition of the Second Assembly District Club of the American Labor Party of Queens County, N. Y., applauding the President of the United States for his continued support of progressive and democratic principles of government in his latest message to Congress; that it commends the President's timely reminder that world peace is safe only in the hands of democratic, representative governments; that it approves that Budget balancing must be kept subordinate to social welfare, to the end that no willing worker shall starve for lack of work; that it approves the President's demand for enactment of wage and hour legislation; that it is in full accord with the President's castigation of monopolies and their practices and the abuses of power of which business has been guilty; and that it commends the President's emphatic stand against shifting the tax burden to those least able to pay; and, further, that it is opposed to any attempt to saddle a sales tax on the people or to reduce personal exemptions in the low-income brackets, and will support measures to stop tax avoidance and correct defects in the law which permit wealthy malefactors to dodge tax payments; to the Committee on Ways and Means.

3774. By the SPEAKER: Petition of the Board of Supervisors of Contra Costa County, State of California, petitioning approval of General Welfare Act (H. R. 4199); to the Committee on Ways and Means.

SENATE

THURSDAY, JANUARY 13, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Wednesday, January 12, 1938, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed the bill (S. 1077) to amend the act creating the Federal Trade Commission, to define its powers and duties, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

CALL OF THE ROLL

Mr. CONNALLY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Connally	Johnson, Calif.	Pepper
Andrews	Copeland	Johnson, Colo.	Pittman
Ashurst	Davis	King	Pope
Bailey	Dieterich	La Follette	Radcliffe
Bankhead	Donahey	Lewis	Reynolds
Barkley	Duffy	Lodge	Russell
Berry	Ellender	Logan	Schwartz
Bilbo	Frazier	Lonergan	Schwellenbach
Bone	George	Lundeen	Sheppard
Borah	Gerry	McAdoo	Shipstead
Bridges	Gibson	McCarran	Smathers
Brown, Mich.	Gillette	McGill	Smith
Brown, N. H.	Glass	McKellar	Steiwer
Bulkley	Guffey	McNary	Thomas, Okla.
Bulow	Hale	Maloney	Thomas, Utah
Burke	Harrison	Miller	Townsend
Byrd	Hatch	Minton	Truman
Byrnes	Hayden	Murray	Tydings
Capper	Herring	Neely	Vandenberg
Caraway	Hill	Norris	Van Nuys
Chavez	Hitchcock	Nye	Walsh
Clark	Holt	Overton	Wheeler

Mr. GIBSON. I announce that my colleague the senior Senator from Vermont [Mr. AUSTIN] is necessarily detained from the Senate today. I request that this announcement stand for all quorum calls during the day.

Mr. LEWIS. I announce that the Senator from Rhode Island [Mr. GREEN] and the Senator from Delaware [Mr. HUGHES] are absent from the Senate because of illness.

The Senator from New York [Mr. WAGNER] is absent because of a slight cold.

The Senator from Oklahoma [Mr. LEE], the Senator from New Jersey [Mr. MOORE], and the Senator from Wyoming [Mr. O'MAHONEY] are detained on important public business.

The VICE PRESIDENT. Eighty-eight Senators have answered to their names. A quorum is present.

ANNIVERSARY OF EIGHTEENTH AMENDMENT—NOTICE OF SPEECH BY SENATOR SHEPPARD

Mr. SHEPPARD. Mr. President, Sunday, January 16, will be the eighteenth anniversary of the eighteenth amend-

ment. Inasmuch as the Senate will not be in session on that day, I shall endeavor to secure recognition from the Chair on Saturday, January 15, in order to address the Senate on the subject of the eighteenth anniversary of this amendment.

REPORT ON PROGRESS OF THE WORKS PROGRAM

The VICE PRESIDENT laid before the Senate a message from the President of the United States, which was read, and, with the accompanying report, referred to the Special Committee on Investigation of Unemployment and Relief Problems, as follows:

To the Congress of the United States:

I transmit herewith for the information of the Congress the report of the Works Progress Administrator on progress of the Works Program, placing primary emphasis on activities of the first 10 months of the calendar year 1937.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 13, 1938.*

REPORT OF BOARD OF DIRECTORS OF PANAMA RAILROAD CO.

The VICE PRESIDENT laid before the Senate a message from the President of the United States, which was read, and, with the accompanying report, referred to the Committee on Interoceanic Canals, as follows:

To the Congress of the United States:

I transmit herewith for the information of the Congress the Eighty-eighth Annual Report of the Board of Directors of the Panama Railroad Co. for the fiscal year ended June 30, 1937.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 13, 1938.*

BOARD OF VISITORS TO THE NAVAL ACADEMY

The VICE PRESIDENT, in accordance with the provisions of law, appointed the Senator from Tennessee [Mr. MCKELLAR], the Senator from Rhode Island [Mr. GERRY], the Senator from Delaware [Mr. TOWNSEND], and the Senator from Oregon [Mr. STEIWER] as members of the Board of Visitors on the part of the Senate to visit the United States Naval Academy.

REPORT OF GEORGETOWN BARGE, DOCK, ELEVATOR & RAILWAY CO.

The VICE PRESIDENT laid before the Senate a letter from Hamilton & Hamilton, transmitting, pursuant to law, the annual report of the Georgetown Barge, Dock, Elevator & Railway Co. for the year ended December 31, 1937, which, with the accompanying report, was referred to the Committee on the District of Columbia.

PETITIONS

The VICE PRESIDENT laid before the Senate a telegram in the nature of a petition from Arthur Osman, executive secretary of the United Wholesale Employers of New York, on behalf of 4,000 members of that organization, praying for the enactment of the so-called Wagner-Van Nuys antilynching bill, which was ordered to lie on the table.

He also laid before the Senate a letter in the nature of a petition from M. A. Smith, of Charlotte, N. C., praying for the enactment of the so-called Wagner-Van Nuys antilynching bill, which was ordered to lie on the table.

REPORT OF COMMITTEE ON INTERSTATE COMMERCE

Mr. WHEELER, from the Committee on Interstate Commerce, to which was referred the joint resolution (S. J. Res. 229) directing the Federal Trade Commission to investigate the policies employed by manufacturers in distributing motor vehicles, and the policies of dealers in selling motor vehicles at retail, as these policies affect the public interest, reported it without amendment and submitted a report (No. 1302) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BARKLEY:

A bill (S. 3231) for the relief of Robert Thompson; to the Committee on Naval Affairs.

By ASHURST and Mr. HATCH:

A bill (S. 3232) to amend an act to provide for the retirement of Justices of the Supreme Court; and

A bill (S. 3233) to provide for the appointment of additional judges in accordance with the recommendation of the Judicial Conference as supplemented by the recommendation of the Attorney General; to the Committee on the Judiciary.

By Mr. MILLER:

A bill (S. 3234) to improve the navigability of the Arkansas River, Red River, Ouachita River, and the White River in Arkansas and Missouri; to provide for flood control of the Mississippi River and the Arkansas, Red, Ouachita, and White Rivers; to provide for reforestation and for the use of marginal lands; for the agricultural and industrial development; for the irrigation of lands; for the restoration and preservation of the water level, and for the development of electrical power in the Arkansas, Red, Ouachita, and White River Valleys; and for other purposes; to the Committee on Agriculture and Forestry.

(Mr. MCKELLAR introduced Senate bill 3235, which was referred to the Committee on Finance and appears under a separate heading on this page.)

By Mr. SCHWELLENBACH:

A bill (S. 3236) to amend the Merchant Marine Act of 1936, to further promote the merchant marine policy therein declared, and for other purposes; to the Committee on Commerce.

By Mr. CONNALLY:

A bill (S. 3237) to transfer to the Secretary of the Treasury a site for a quarantine station to be located at Galveston, Tex.; to the Committee on Public Buildings and Grounds.

By Mr. SHEPPARD:

A bill (S. 3238) to provide for recording of deeds of trust and mortgages secured on real estate in the District of Columbia, and for the releasing thereof, and for other purposes; to the Committee on the District of Columbia.

AMENDMENT OF SOCIAL SECURITY ACT

Mr. MCKELLAR. Mr. President, I ask unanimous consent to introduce a bill to amend in one respect the Social Security Act, and that it be printed in full in the RECORD and appropriately referred. In connection with the bill, I ask consent to have printed in the RECORD copies of two letters which will explain the situation quite fully. I think they will be enlightening to Senators who are interested in social security.

The VICE PRESIDENT. Is there objection? The Chair hears none.

The bill (S. 3235) to amend the Social Security Act so as to provide for the selection on a merit basis of certain personnel for whose compensation appropriations are made by the Federal Government, was read twice by its title and referred to the Committee on Finance, as follows:

Be it enacted, etc., That clause (5) of section 2 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

SEC. 2. That subdivision (1) of section 303 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

The letters referred to by Mr. MCKELLAR are as follows:

MEMPHIS, TENN., *December 8, 1937.*

Hon. KENNETH MCKELLAR,
United States Senator, Washington, D. C.

DEAR SENATOR: Relative to the personnel set-up in Nashville under the Unemployment Compensation Division, I find that section 303–a of the Social Security law provides as follows:

"The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under title IX, includes provisions for—

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; * * *"

It is my information that the Federal Government is paying the salary of the personnel referred to in the various States. The Tennessee law reads as follows:

"(d) Personnel: Subject to other provisions of this act, the commissioner is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The commissioner shall classify the positions and shall establish salary schedules and minimum personnel standards for the positions so classified. He shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except for temporary appointments not to exceed 6 months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. The commissioner shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commissioner shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon the ratings of efficiency and fitness, and for terminations for cause. The commissioner may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling moneys or signing checks hereunder. These examination provisions shall be in effect until this State shall have adopted an acceptable merit rating system."

And further:

"SEC. 17a. The commissioner, with and by the consent of the Governor and attorney general, is authorized to employ a qualified full-time salaried attorney for legal work in connection with the unemployment compensation division. Such attorney shall be under the jurisdiction of the attorney general and reporter, and shall devote his full time to the unemployment compensation division."

As you know, the State administration first employed Fletcher Cohn, a lawyer of Memphis, as chief counsel for this set-up of unemployment compensation division in Tennessee. As a result of the recent political fight between the State administrator and our Memphis-Shelby County organization, Mr. Cohn was let out with only 1 day's notice.

State Senator Houghlon Akin and Representative Cayce Williams, hereinafter referred to, both hold State offices. These two appointments are in direct violation of the statute under section (d) above quoted.

Mr. Alex Gray, of Brownsville, who was put in in Mr. Cohn's place, had influenced Representative Dixon to vote for Governor Browning's partial disfranchisement bill in the two recent extraordinary sessions of the legislature called by the Governor. Mr. Dixon was a young lawyer in the office of Gray & Gray, Brownsville.

It is also charged that Mr. O'Dell, Republican representative from Cocke County, who voted for the disfranchisement bill, has had a son put into that department. Young Mr. O'Dell came into the office on or about October 17, and the vote on the disfranchisement bill took place on or about October 20.

It is also charged that Representative James Vines, a Republican representative from Washington County, had his brother appointed to a place in the unemployment compensation division, and that Representative Vines voted for the disfranchisement and affiliated bills.

It is charged that Cayce Williams, Weakley County representative, who voted for the disfranchisement bill, has a job in the same department. This is directly antagonistic to the State statute quoted above.

It is also charged that State Senator Houghlon Akin, of Jackson, Madison County, who voted for the disfranchisement bill, was also given a position in the same department. I quote the Associated Press of December 6:

"NASHVILLE, TENN., *December 6.*

"Labor Commissioner Albert Gore announced today the appointment of State Senator Houghlon Akin, of Jackson, as deputy commissioner to handle benefit claims for unemployment compensation. The salary, it was added, will be $1 per year plus actual expenses. This is a new position."

This is in absolute violation of the statute quoted above.

It is also charged that Elijah Tollett, of Cumberland County, who happens to be under indictment in the Federal court for swindling a non compos mentis soldier, was promised or given a place in the same department, but there was such a hue and cry about it that they seem to have arranged the matter with him in some other way.

It is also charged that for like reasons three young ladies were employed in the same department who had had no experience of any kind, typist or otherwise. These young ladies are supposed to have replaced three young ladies who had previously been appointed.

I am giving you this memorandum so that you can see just exactly what has been done. If these charges are true, the Federal Government's money should not be used for any such improper purposes. Whether these charges are true or not, I think the Federal Government should control the employment of those who spend the Federal Government's money. I know that you are interested in introducing an amendment in the Senate to bring this about.

It is inconceivable to me that the Social Security Board, acting for the Federal Government, would countenance or permit this essential, if not criminal, bribery, and I wish you would take the matter up with that Board and have it make an independent examination, giving you the facts concerning each case.

If you cannot get the Board to make the proper examination and cause these officials thus appointed to be dismissed and honest and capable people put in their places in accordance with the Federal and the State statutes, then I trust you will have a Senate investigation of the matter so that the facts may come to light.

With kindest regards, very sincerely yours,

E. W. HALE.

DECEMBER 24, 1937.

Hon. MARY DEWSON,

Social Security Board, Washington, D. C.

DEAR MISS DEWSON: Some time ago I called your attention personally to what had been reported to me as improper uses which were being made of the social-security law in Tennessee.

Enclosed, I hand you a letter from Commissioner E. W. Hale, of Memphis, Tenn. (Shelby County), citing portions of the Federal law and portions of the State law in reference to social security.

Sometime after the Social Security law went into effect the commissioner having charge of this work in Tennessee, with the consent of the Governor and the attorney general, appointed Mr. Fletcher Cohn as attorney, and made the other appointments provided for under the act. Mr. Cohn was from Memphis. Everything went along smoothly apparently until September 13, 1937, when Governor Browning had a political conference with Mr. E. H. Crump, of Memphis, which resulted in a disagreement, Mr. Crump refusing to do what Governor Browning asked. Governor Browning returned to Nashville and announced he would call an extraordinary session of the legislature to bring about better conditions in Memphis, as he claimed.

The facts were that Mr. Browning was nominated through the votes and influence of the Memphis Democratic organization, headed by Mr. Crump. He not only received some 60,000 majority in the city of Memphis, but the fact that it was advertised he would receive this majority in Memphis caused him to receive large majorities in other counties which he would not have received had Shelby County not gone for him. After the primary election in August 1936, Mr. Browning telegraphed that there were 60,000 reasons why he loved Shelby County, referring to his majority there. Notwithstanding this generous support, after the difference that he had with Mr. Crump on September 13, he called an extraordinary session of the legislature and announced that he wanted the legislature to pass a county unit plan for primary elections for only three offices, United States Senator, Governor, and railroad and public utilities commissioner. All of these come up for nomination next August.

In a sentence, this county-unit plan provides that each county casting more than 100 Democratic votes for President in 1936 should have 1 vote for each 100 votes cast, provided that no county would be entitled to more than one-eighth of the population as shown by the Federal census of 1931.

The provisions of this system would reduce the vote in Shelby County (Memphis) to 384 instead of 600, as she would be entitled to on the usual basis. In part, it also disfranchised some 37 or 38 other counties. The State Senate passed the bill and the House passed it by one vote more than the constitutional majority. In the meantime, since the regular session of the legislature another situation came to light.

Some six or more legislators had accepted other positions under the State or counties and had been sworn in. They were receiving their salaries as such county or State officers. It had been held by our courts that, under our Constitution, which prohibits a person from holding more than one State or county office at a time, when these legislators accepted the new positions they vacated the offices of legislators. Notwithstanding this, however, these several officials were brought back to the legislature, where they voted. Their votes helped make the 51 votes necessary to pass this law.

Opponents of the measure filed court proceedings, and the lower courts held that the laws thus passed were invalid. These cases are now before the supreme court of the State.

I am giving you these facts to acquaint you with the situation. None of the legal proceedings mentioned referred to the positions mentioned in the attached letter from Mr. Hale, except Representative Vines.

I am referring Mr. Hale's letter to you for the purpose of having your Board make an investigation concerning the five members of the legislature referred to by Mr. Hale, and I am asking your Board to have the matter examined into and to report answers to the following questions raised by Mr. Hale:

1. Was Mr. James Dixon, a Representative from Brownsville, Haywood County, connected with the law firm of Gray and Gray there, of which Alex Gray is a member; did Gray and Gray influence James Dixon to change his vote in favor of the Browning disfranchisement bill, as it was called; did Dixon vote for it; after the extraordinary session adjourned was Mr. Cohn removed as attorney for the Social Security Board and Mr. Alex Gray appointed in his place; and does the Federal Government furnish the money to pay the salary of Mr. Alex Gray?

2. Did State Senator Houghlon Akin, of Jackson, Madison County, vote for the disfranchisement bill and these other political measures during the extraordinary session, and after that session was he employed in the Social Security set-up; at what salary or

at what expense per month; is the Federal Government paying the expenses and salary of said Akin?

3. Did Representative Cayce Williams, of Weakley County, vote for the disfranchisement bill after expressing himself as being opposed to it; a short time after the adjournment of the extraordinary session was he appointed to a place in the Social Security set-up in Tennessee; at what salary; is he now drawing pay from the Federal Government?

4. Was Elijah Tollett, a representative from Cumberland County, promised a position in the unemployment division of the Social Security set-up in Tennessee; did he vote for the disfranchisement measure; was it reported in the public press that he had been appointed to a Social Security position; did it then occur that Representative Tollett was under indictment in the Federal court; after that did his sister receive an increase in salary of $50 per month?

5. Did James Vines, a Republican representative from Washington County, vote for the disfranchisement bill recommended by the Governor; after he voted for it was a brother of his put to work in the Social Security set-up; at what salary; is he drawing a salary from the Federal Treasury?

6. Did a young son, some 18 or 19 years of age, of Mrs. Caroline O'Dell, of Newport, Republican representative from Cocke County, receive a place in said Social Security set-up; on what date did he receive it; on what date did Mrs. O'Dell vote for the Browning disfranchisement bill; is her son on the pay roll of the Federal Government in this set-up?

7. Please have the question of the three young ladies who were discharged and others put in their places examined into, and kindly report who recommended dismissal of those already in and who recommended the employment of those who took their places, giving their names.

(You will note that Mr. Hale states that the above-mentioned five members of the legislature were bribed to vote and are being paid for their votes out of the Federal funds allotted to social-security work.)

8. Please ascertain and report specifically whether any examination was held prior to the appointment of these three members of the legislature, and the brother and son of the other two members of the legislature referred to in this communication.

9. Please advise me if your Board does not believe that the following provision of the Social Security law should be repealed:

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; * * *."

My own judgment is that where Federal money is expended it should be expended by Federal officials, not by the State officials or any other organization.

These alleged acts have so recently occurred that I know you will not have the slightest difficulty in getting the information and in answering categorically the facts.

Of course, I could have a Senate investigation of the matter, but such is my great respect, admiration, and esteem for you, and in confidence in your honesty, that I am writing you first so that you can have the matter examined into and advise me as early in January as you can.

I feel that I should also tell you that I have made an independent examination of these facts, and that information leads me to believe that these facts are true.

Thanking you for your early consideration of this matter, I am,

Sincerely your friend,

KENNETH MCKELLAR.

AMENDMENT OF TARIFF ACT OF 1930—AMENDMENT

Mr. GUFFEY submitted an amendment intended to be proposed by him to the bill (H. R. 8099) to amend certain administrative provisions of the Tariff Act of 1930, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

JACKSON DAY DINNER SPEECH BY SENATOR PEPPER

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD a Jackson Day dinner address delivered by Senator PEPPER at Miami, Fla., on January 8, 1938, which appears in the Appendix.]

RESTRICTED IMMIGRATION AND MANDATORY DEPORTATION—ADDRESS BY SENATOR REYNOLDS

[Mr. REYNOLDS asked and obtained leave to have printed in the RECORD a letter signed by residents of 12 different States and the District of Columbia, relative to a radio address delivered by him on January 10, and the text of a radio address delivered by him on January 12, 1938, on the subject "Restricted Immigration and Mandatory Deportation," which appear in the Appendix.]

MINUTES OF THIRTY-FOURTH ANNUAL MEETING OF THE UNITED STATES GROUP—THE INTERPARLIAMENTARY UNION

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD the minutes of the Interparliamentary Union, the thirty-fourth annual meeting of the United States group, held in Washington, D. C., on Monday, January 18, 1937, which appears in the Appendix.]

EQUAL RIGHTS FOR WOMEN—SPEECH OF VERA BRITTAIN

[Mr. BURKE asked and obtained leave to have printed in the RECORD a speech delivered by Vera Brittain, British author and lecturer, on the subject "Equal Rights for Women," before the national conference of the National Women's Party, meeting in Washington, D. C., December 14, 1937, which appears in the Appendix.]

AIRPORT SITE FOR THE DISTRICT OF COLUMBIA

[Mr. GIBSON asked and obtained leave to have printed in the RECORD an article from the Washington Evening Star of January 11, 1938, relative to an airport site for the District of Columbia, which appears in the Appendix.]

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

The VICE PRESIDENT. When the Senate took a recess yesterday the RECORD indicates that the Senator from North Carolina [Mr. BAILEY] had the floor and desired to continue his address this morning. The Senator from North Carolina, therefore, is recognized.

Mr. REYNOLDS. Mr. President, will my colleague yield to me?

The VICE PRESIDENT. Does the senior Senator from North Carolina yield to his colleague?

Mr. BAILEY. I yield.

Mr. REYNOLDS. Mr. President, yesterday I made mention of a number of eminent colored people in North Carolina, and I stated the fact that Dr. Miller, colored, a physician of the city of Asheville, was looked up to and respected and had provided inspiration for other colored physicians of the South. I likewise mentioned Dr. Shepherd, who is president of the North Carolina College for Negroes. I referred to this matter because of an article which I observed in the columns of the press of North Carolina, making mention of the fact that North Carolina had named three roadways or highways for eminent colored educators, and I introduced in the RECORD that article.

I recall the other day that my colleague from Tennessee [Mr. MCKELLAR] read into the RECORD a list in numbers of colored dentists, doctors, educators, writers, physicians, and so forth. I was wondering if the Senator from Tennessee had that list divided into States.

Mr. MCKELLAR. No; I have not.

Mr. REYNOLDS. My reason for making the inquiry was that I wanted, if possible, to contribute to the remarks of my colleague from North Carolina [Mr. BAILEY], who is addressing the Senate on this subject. I shall be glad to have later a list of the number of colored dentists, doctors, educators, school teachers, and so forth, in Tennessee, if my colleague from Tennessee has not that list at the present time.

Mr. MCKELLAR. I will look up the data I have; and if I have the information by States, I shall be delighted to furnish it.

Mr. REYNOLDS. If the Senator has that information, I shall appreciate very much his providing me with it, in order that I may turn it over to my colleague [Mr. BAILEY] while he is addressing the body at this time.

Mr. JOHNSON of California. Mr. President, I desire to ask the Senator from North Carolina a question. I heard him speak of a list of colored gentlemen. Does he mean the list of those who were brought here at the expense of the Government by the Agricultural Department? Was it a list of those who ran colored newspapers in the United States?

Mr. REYNOLDS. Oh, no! I was only making mention of a list of colored doctors, dentists, lawyers, educators, and writers. I made mention of that for the reason that several days ago the Senator from Tennessee [Mr. MCKELLAR] introduced into the RECORD, in conjunction with his remarks, a

statement of the number of colored lawyers, doctors, and educators to be found in the United States.

Mr. JOHNSON of California. I did not fully catch what the Senator said, and I thought probably he referred to the list of distinguished colored editors who were brought here at the expense of the United States by the Agricultural Department.

Mr. REYNOLDS. No, Mr. President.

Mr. McKELLAR. Mr. President, if I may interrupt for just a moment, if the Senator from California has that list I wish he would furnish it to the Senate. As a member of the Appropriations Committee I should like to have that list, if possible.

Mr. JOHNSON of California. I am sure the Senator would; but the Senator from Ohio [Mr. BULKLEY], I think, put in the RECORD a letter furnished by Mr. Tolley, of the Agricultural Department, justifying it. The Senator will find the list in the RECORD.

Mr. McKELLAR. I shall be glad to look it up.

Mr. BAILEY. Mr. President, yesterday afternoon I had reached the stage in my argument in which I was about to bring forward the farewell address of President Andrew Jackson in support of my contention that not only is this bill unconstitutional, but its unconstitutionality is such as to reach into the vitals of the structure of our Government. I hope I may proceed with that address today. I have been informed, however, that the distinguished senior Senator from Arkansas [Mrs. CARAWAY], for whom we all have a very high and warm regard and whom we delight to hear, desires to be heard at this time. I should like, therefore, to have leave to yield the floor to her without yielding my right to proceed at the conclusion of her remarks. I ask unanimous consent to that effect.

Mr. CONNALLY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Texas will state it.

Mr. CONNALLY. Is unanimous consent required to enable the Senator to yield, inasmuch as his remarks today are a mere continuation of the speech he began yesterday?

The VICE PRESIDENT. Unanimous consent is not required. In all good faith, however, if the Senator from North Carolina should yield the floor to the Senator from Arkansas, the Chair would hold that the Senator's remarks up to this time constituted one speech, if that is what the Senator from Texas is inquiring about.

Mr. CONNALLY. The inquiry was, if the Senator from North Carolina yields to the Senator from Arkansas, may he not resume his speech at the end of her remarks?

The VICE PRESIDENT. If the present occupant of the chair is in the chair at the time, the Senator from North Carolina will be recognized; and the Chair hopes the same course will be followed by any Senator who may be in the chair at the time.

Mrs. CARAWAY. Mr. President, for a long time I have refrained, for a number of reasons, from having anything to say on this so-called antilynching bill. The fact that it is so called has made it embarrassing for those who must oppose it on the grounds of unconstitutionality and its effect upon the rights of the States to self-government.

I have never approved or condoned lynchings. I have always been sick at heart when I have read of anyone being executed without a trial in the courts. Most of my life I have been an employer of colored men and women as helpers in running my household. I have been considerate of their health and their feelings. I have sought to establish a mutual understanding of what each race owes to the other. In other words, this relationship has been placed upon a basis of mutual respect, which fosters self-respect and regard for the rights of others. I have been most successful and happy in retaining their services. In fact, my present maid, whom I brought with me from Arkansas, has been in my employ as laundress since 1905, and has been with me in Washington for 10 years or more as general housekeeper. Another woman, with two children, reared her children while in my employ, living in a house on our grounds. She unfortunately developed a cancerous condition in her wrist, and the arm had to be amputated. I took her to Memphis and had the operation performed. We went to a Memphis doctor because she wished to go there, even though it was more expensive for us. We kept her in our home, paying her wages, and making her feel she was still self-supporting, hoping to prolong her life. She went to her daughter in Ohio for a visit and died there, and I lost a friend.

I am not trying to give myself a halo or anything like that. I am only trying to show that the Negro question does not enter into my opposition to this bill. I am sure my attitude is the attitude of most of the people of the South. I am a bit resentful and fearful that bad feelings engendered by such legislation as this may retard the good work being done to help and uplift a people who have always had my sympathy.

Official matters coming to my office from Negroes are handled the same way as are others. Everything I can do to see that they get justice is done. I have assisted in hundreds of worthy cases of this kind.

We hear much criticism of the so-called filibuster on this measure. I do not think this is a filibuster. This is a debate which has placed the issue before the people in such a way that the whole country now knows there is more involved than the mere prevention of lynchings. The very title of the bill is misleading, as I have found to be the case with many measures brought before the Congress. It is called an antilynching bill. Is not the first reaction to that by everyone who reads it "Why, of course, I am for that. How could one oppose it?" For lynchings are naturally obnoxious to everyone.

The great majority of the people do not stop to think of what may be contained in the bill itself. I doubt if even a small percentage of the citizens of the United States, despite the propaganda which has been carried on for years in behalf of the bill, have ever read it or realize the purpose back of the fight to have it enacted.

As have other Senators, I have been bombarded with propaganda urging me to support the bill. I received one communication from an organization in a large city which was particularly strong in its demand for the enactment of this bill. I sent the authors of the communication a copy of the bill and asked them to write me fully the sections which they favored or disliked. I never had a reply.

I may be in error, Mr. President, but I firmly believe that if the people of the United States knew what was really in this measure and all of the purposes behind it the percentage of those who favor it would be relatively small.

I have no desire to discuss the obvious unconstitutionality of the bill or its other legal features. This has been so ably done by the senior Senator from Idaho [Mr. BORAH] and other great lawyers in this body that I should only be painted the lily. I seriously doubt that many lawyers in the Senate or out of it who know constitutional law will argue that the measure is constitutional.

For a while I may have had some doubt that this bill was aimed at the South. I have none now. It is a gratuitous insult to our section. It is just another blow in furtherance of a desire to reduce to a minimum, if possible, the influence of a group and section that have always believed in a democratic form of government. These people—my people—have always clung with undying fealty to the tenets of the States' rights doctrine in the face of continued assaults of the Republican Party; and now Democrats themselves, or self-styled Democrats, are making the attack.

We of the South have stood much, Mr. President. We have surrendered much. This effort is just one of the many which would seek to take away from our section some of the influence we have had.

When the Democratic national convention met in Philadelphia in 1936 there had been a preconvention campaign for the abolishment of the two-thirds rule. What the South was thinking of when it let that rule be abolished is more than I can understand. My voice was raised in protest against the abrogation of the two-thirds rule when we had a meeting of

our State delegation on the subject. The abrogation of this rule will cost the South much in the days to come.

Since then various things have happened which lead me to believe that there are certain groups who would destroy the South not only as a political entity but as a business threat in competition with other sections.

As an illustration of a part of this plan let us consider the feverish desire to pass the pending bill. Why force consideration of it at the present time?

Ever since the Civil War we have had periodically a bill of this sort introduced. This has been done despite the fact that the records show an ever-increasing decline in lynchings.

The figures from the Tuskegee Institute which were placed in the RECORD by my colleague [Mr. MILLER] and others show that there was never less need of a bill of this sort than at this time. An editorial from the Arkansas Democrat, which I placed in the RECORD a few days ago, also bears on this point.

When there happens to be a lynching, it is given great publicity. We seldom, if ever, hear of the great number of cases where the orderly processes of the law are carried out, even in the face of extremely revolting crimes. It is seldom that we hear of the prevention of lynchings by brave public officials who risk their lives in protecting their prisoners from mobs, although it has been read into the RECORD several times that in 1937 there were only 8 lynchings, while 56 were prevented.

Let me repeat, there never was a time when there was less need of forcing through a bill of the character of the one now before the Senate.

There was no lynching in my State during the past year. The orderly processes of the courts were carried through time and again. Let me bring to the attention of the Senate an occurrence which has happened since the debate on this measure has begun.

I desire to have printed in the RECORD at this point as part of my remarks a letter from a prosecuting attorney of my State describing a most revolting crime in Crittenden County, Ark., and the way in which the case was handled. Notwithstanding the terrible offense committed, there was no talk of lynching.

The PRESIDING OFFICER (Mr. MILLER in the chair). Is there objection to the request of the Senator from Arkansas?

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OSCEOLA, ARK., *January 10, 1938.*

Re: Antilynching bill.
Senator HATTIE CARAWAY,
Senate Building, Washington, D. C.

DEAR MRS. CARAWAY: I notice that the antilynching measure is before the Senate for consideration. Naturally we people of this section of the country are opposed to a law of this kind. I certainly feel that all serious cases, where lynching usually follows, can be handled in a lawful and orderly manner.

No doubt you have read from the papers an account of the trial of two Negroes at Marion, Ark., in this district, and by reading the papers it would be sufficient to convince anyone that Negroes, although charged with assaulting a white girl, can have a fair and impartial trial.

On the night of December 25, 1937, two Negroes, Theo Thomas and Frank Buster Carter, residents of Memphis, Tenn., assaulted Miss Maple Wilson, a white girl 18 years old, also a resident of Memphis. The crime was committed on the night of December 25. On the morning of December 26 these two defendants were arrested. On December 27, as prosecuting attorney of this district, I filed information against these defendants, charging them with the crime of rape. A certified copy of the information was served on the defendants, together with a bench warrant that was issued by the clerk of the court. On the afternoon of December 30 these defendants were arraigned on these charges. They were advised of the charges placed against them. Attorneys were appointed by the court to represent them and make whatever defense they had. One of the defendants indicated that his people would be able to raise money to pay these attorneys, and I am advised that they have been paid some money as a fee to represent the defendants. Mr. W. B. Scott, of Marion, a veteran of the bar, together with Mr. Cecil Nance, a very capable young lawyer, also of the Marion bar, were appointed to represent these defendants. The case was set for trial on January 6, 1938, a special term of court being called. The defendants were advised a week before the trial of the time and place of trial. They were given every opportunity possible to get witnesses and to arrange their defense. On January 6 court convened and all parties announced ready for trial. Great care was taken in selecting a jury. About 10 challenges were exercised by the defendants. In order to be very precautious that they would get a fair trial and that they could not complain that they were tried by white jurors who were prejudiced against Negroes, two Negroes were placed on the regular panel, and about three other Negroes were called as special jurors. The two Negroes on the regular panel were accepted by the State. One of them was excused by the defendants. The jury was completed, consisting of 11 white men and 1 Negro. The case went to trial, and at the conclusion of all the testimony, and instructions given by the court, and argument of counsel, the jury retired to consider its verdict, and after about 7 minutes they returned in open court and rendered a verdict, finding the defendants guilty and fixing their punishment at death by electrocution. A few hours later they were sentenced to be electrocuted on the 8th day of February. The defendants filed a motion for new trial, which was overruled by the court. They indicated that they might appeal from the verdict. They were told then that they would be given every opportunity they wanted in order to perfect their appeal.

Briefly, the testimony showed that these defendants approached a young man by the name of F. E. Brading and the young lady, Miss Wilson, who had parked in a car just off Highway 61 near the Government fleet in Crittenden County, Ark.; they first indicated that they intended to rob the two; they both got in the car with Miss Wilson and Mr. Brading, drew knives and threatened to kill them; they forced the two to get in the back seat with one of the Negroes; the other Negro got in the front seat and started to drive off with the car, then stopped and forced Miss Wilson to get in the front seat with the other Negro. Then they began to threaten Miss Wilson and let her know that they intended to assault her. They drove for about a quarter of a mile, stopped the car, and one of the Negroes drew a knife on young Brading, and he ran to the Government station, which was about 100 yards from where the car was parked to get help. While he was gone both the Negroes drug Miss Wilson out of the car, across a field into the woods, and one of the Negroes assaulted her and brutally mistreated her. After he had finished he turned her over to the other Negro and told him that after he had finished with her to kill her and throw her in the river. The other Negro took her and kept her out in the woods and fields for about 4 hours; during which time he assaulted the young lady at least two times. She remembered the two times positively and was hazy about other times that occurred, because she lapsed into unconsciousness at times.

The Negroes were positively identified as being the Negroes who went to the car. They were seen by some other people on the highway near the scene where the car was parked. They were arrested and positively identified as being the Negroes who committed the crime. They were placed in jail and kept under guard, and it was generally understood that no one could be allowed to interfere with the trial of these Negroes. The officers were very cautions in handling the whole affair. The Negroes took the stand in the trial of this case, and both of them admitted that they were the two Negroes who approached Miss Wilson and Mr. Brading; that they drove the car down the road until it stuck in the mud, and that they took Miss Wilson and Mr. Brading out of the car. They admitted practically all of the testimony given by Miss Wilson, as to the time and place that they were with her. The only thing they denied was the assault. Miss Wilson was taken to the St. Joseph's Hospital after she was found, which was about 2:20 in the morning of December 26. The two Negroes were with her about an hour. One of them left and the other stayed with her the rest of the time, about 3½ hours, or maybe 4. In all they had her out in the woods and in the fields about 5 hours.

When she was found practically all of her clothes were torn off of her. She was a pitiful sight. She was bruised, lacerated, and bleeding. Miss Wilson, after being assaulted and after being found by the officers, was taken to the hospital, was examined and treated. The doctors who treated her stated that she had been assaulted. One of the doctors testified in the trial that she had been assaulted; that she was lacerated and bleeding; that she was bruised about her breasts; that she had bruises and contusions about her body and limbs. She was required to stay in the hospital about 10 days. She was in a very nervous condition, and at the time of the trial it was plain that she was suffering physically and mentally. In fact she still presents a very pitiful sight. It seems that her future is very dark. In face of all of this testimony and the circumstances surrounding the case, these Negroes were protected by the officers. They were given a fair trial. They were allowed to have any witnesses that they wanted. They were tried by a jury on which at least one of their own color served. This trial happened in Crittenden County, Ark.

This should be sufficient evidence that the officials and citizens of the South are ready and willing to give people who commit the most heinous crimes a fair and impartial trial.

Judge Neil Killough was the presiding judge. Sheriff Howard Curlin and his deputies arrested these defendants, and he, together with some of the State police, kept them in custody and protected them against any demonstration of mob violence; and I am glad to say that the people were reconciled with the proceedings, and no offer or attempt was made to mob or lynch these Negroes. As prosecuting attorney, I informed them of every step that was being taken against them. In presenting the case they were given every consideration that any defendant on trial is given. No effort was made on my part to prejudice the minds of the jurors against the Negroes on trial. I only argued the law and evidence as introduced in the case and told the jury to give them the benefit of the doubt allowed them under the law.

I am giving you this information, Mrs. CARAWAY, because it may be possible that this will be of some assistance to you in your opposition to the antilynching bill. If I can be of further service to you in this cause or any other cause, I shall be glad to have you call on me. If you think it advisable, or even worth while for me to appear before the committee or any committee in connection with this matter, I shall be glad to do so and would be willing to make the trip to Washington on short notice.

Sincerely,

BRUCE IVY.

Mrs. CARAWAY. Mr. President, I am proud of the actions of the officials of Crittenden County and my State in their handling of this case. I will now read an editorial from the Arkansas Gazette regarding the way in which this case was conducted:

THE TRIUMPH OF THE LAW IN CRITTENDEN COUNTY

Crittenden County and Arkansas have given the country a demonstration of respect for law. Justice moved swiftly in the trial at Marion of two Negroes on a charge of raping a white woman. The proceedings lasted only 1 day. The verdict, carrying the death penalty, came only 7 minutes after the jury began its deliberations. Among the jurors who returned that verdict was a member of the defendants' own race, and six other Negroes had been in the special venire summoned to try the case. If justice was swift, it was also scrupulous in observing every right of the men on trial. In the crowded courtroom there was no demonstration against the prisoners.

In the whole conduct of this case the Crittenden County courts and the people of Crittenden County have done an invaluable service to Arkansas and to the South. The orderly way the law dealt with two Negroes guilty of a terrible crime, the crime most provocative of resort to lynching, is the most impressive answer that could be made to the ill-advised if not futile legislation now in Congress, the so-called antilynching bill.

I agree with the Gazette that that is the most impressive answer that could be made to the ill-advised, if not futile legislation, now being considered.

I am convinced that the people who are sponsoring this bill and fighting for its passage are, at least in part, inspired to do so for political reasons.

I am also forced to the conclusion that a part of this plan is an attempt to change the Constitution without having to refer an amendment to the people. Those sponsoring the bill want the Federal Government to have all of the power of a Nazi or Fascist state before the people are aware of what is happening.

Our Government was founded on the principle of States' rights, and has, because of that, achieved and maintained a leading position among nations which could have come no other way. Shall we take this backward step?

Some Senators, from whom we expected a better understanding of the needs of Government, want to take away the last vestige of States' rights, they would sweep away the jurisdiction of our courts, and camouflage this purpose by saying that it is to prevent a crime which has all but passed into the limbo of things that were.

I feel that should the bill be enacted, it might be unenforceable. Prohibition certainly was not enforced. There are times when law will not prohibit. All will agree that at the present time lynching is not as serious a problem as is kidnaping. I should like to quote a paragraph from a recent editorial in the Washington Post, calling attention to this fact:

At present lynching is not as serious a problem as kidnaping. Twenty persons were kidnaped in the United States last year. If State officials, including Governors, are to be prosecuted for negligence in bringing lynchers to justice, the Government should also crack down when kidnaping and murder cases are bungled. Following the theory of the antilynching bill to its logical conclusion, therefore, law enforcement would soon be a Federal problem and local self-government would be on the road to extinction.

I firmly believe that should the bill become a law and be perpetrated upon the American people, it would in itself be a greater crime against our Government and our people than any that has ever been committed in our whole history.

Mr. President, I ask unanimous consent that the clerk read the views of the minority of the Committee on the Judiciary of the Senate, Forty-ninth Congress, second session, on a bill similar to the one before the Senate.

The PRESIDING OFFICER. Is there objection?

There being no objection, the matter referred to was read, as follows:

[Senate. Views of the minority, No. 1956. 49th Cong., 2d sess.]
In the Senate of the United States. February 25, 1887. Ordered to be printed

Mr. George, from the Committee on the Judiciary, submitted the following views of the minority (to accompany bill S. 2171):

The undersigned, a minority of the Committee on the Judiciary, are unable to agree with the majority either as to the expediency or the constitutionality of Senate bill No. 2171, "to provide for inquests under national authority."

Sanctioned as the bill is by a majority of the members of this committee, it comes before the Senate with the prestige of the high character and eminent abilities of its framers and supporters. In opposing it on constitutional grounds we admit that it is incumbent on us to show by the clearest reasoning and the highest judicial authority that this bill is, as we believe it to be, unwarranted by the Constitution, and, if enacted, would be a grave and serious usurpation by Congress of essential powers reserved to the States, and that the means by which the inquest is to be made are equally in violation of that instrument.

This must be our apology for that elaboration of argument necessary to make due and proper inquiry into and examination of the questions involved in the bill.

The bill provides that on the application of any three citizens of the State in which the injury shall be committed the United States circuit judge shall order a special term of his court to be held, and shall then summon witnesses and inquire into facts connected with any alleged homicide committed, or serious bodily harm, or serious injury in person or estate, perpetrated or threatened, where such offense has been committed: "(1) Because of the race or color of such person so killed, injured, or threatened; (2) or because of any political opinion which such person so killed, injured, or threatened may have held in regard to matters affecting the general welfare of the United States; (3) or with design to prevent such person so killed, injured, or threatened, or others, from expressing fully such opinion; (4) or from voting as he or they may see fit at any election of officers whose election is provided for by the Constitution and laws of the United States; (5) or to affect the votes of such person or others at such elections."

And the bill further requires the judge to report the evidence thus by him taken, and his conclusion of facts thereon, to the President of the United States, to be by him laid before Congress.

No other action by the judge or court is required or even contemplated.

The theory of the bill, however, must necessarily assume that Congress may, when the report is submitted to it, make it the basis of legislative action in respect to all the matters named in it. That is, the bill asserts a power in Congress to legislate for the protection of the rights and for the punishment of the wrongs specified in it. These alleged rights, except in the two last clauses, which refer alone to voting at Federal elections, are the right to security in person and estate against assaults made or threatened by the wrongful acts of private individuals, if such assaults were made because of race or color or of holding or expressing political opinions. Or, in other words, jurisdiction is asserted in the Federal Government over all injuries to person or property, committed or threatened, where the perpetrator and the victim are not both of the same race and also of the same political party. For it is manifest that where they are of different races and of different political parties it will be impossible, as to the former at all times, and as to the latter in times (very frequent and prolonged) of high political excitement, to eliminate these circumstances from such transactions.

But the bill even goes further than this. If three men can be found in a State who will make oath according to their belief that any conflict, either actual or apprehended, any injury to person or estate, consummated or threatened, had for its basis any of the reasons and the causes mentioned in the bill, the court must undertake the investigation "into the circumstances" of such killing, injury, or threatening, and report the evidence taken and the conclusions of fact to the President, notwithstanding it may be established that the transaction, whatever it may be, had no such cause or basis, and was in fact between persons of the same race and color and of the same political party, and was the result of causes wholly different from those mentioned in the bill, and even of causes which rendered the conduct of the actor entirely justifiable.

The bill contains so serious an attack on the power, jurisdiction, and dignity of the States, is so harmful in its effects, so utterly at variance with the Constitution and being directed in the main, as this avowedly is, against the Southern States exclusively, that we feel that we are not only warranted, but required, to make such examination into the powers, jurisdictions, and rights of the States, and the powers of Congress, as may be necessary to defeat it.

We shall therefore inquire as to the depository nature and extent under our system of the governmental powers to protect the rights of persons and property against assaults and violations by private individuals, when such wrongs are committed or threatened within the limits or jurisdiction of a State. To make this examination full and perfect it is necessary to consider somewhat carefully the nature, purposes, and objects, as well as the powers of the Government of the United States, in connection with the powers and duties of the States; and also the scheme of government which the two combined have formed.

STATE AND FEDERAL GOVERNMENTS BOTH PARTS OF A WHOLE

The Federal and State Governments are complements of each other; both are essential parts of a whole. To conceive a government having sole jurisdiction over a people, but with no other powers than those granted to the Federal Government by the Constitution of the United States, would be to conceive an anomaly as well as an impotent abortion. Such a government would possess no power over contracts, over marriage and divorce, the civil relations of husband and wife over descents, inheritances, and testaments, over titles and tenures to property, over the great fundamental rights of life, liberty, and property, and the pursuit and acquisition of happiness. On the other hand, a government considered as a whole and not as a complement of another which possessed no other powers than those now belonging to the States would be utterly powerless outside its own territorial domain and without essential powers within it. It could possess no army, no navy, grant no patents or copyrights, coin no money, emit no bills of credit, fix no standard of weights and measures, levy no tonnage, duties, or taxes on imports or exports, receive or send no ambassadors, ministers, or consuls, enter into no treaties or alliances, nor regulate in any way commerce between itself and other States or foreign nations. It could neither make war nor conclude peace.

"We have in our political system," says Chief Justice Waite in *United States* v. *Cruikshank* (92 U. S., p. 549), "a Government of the United States and a government of each of the several States." And Judge Miller, in the *Slaughterhouse Cases* (16 Wall., p. 82), said that "the existence of the States was essential to the perfect working of our complex form of government"; complex in this, that we have two distinct governments, operating on and regulating the rights and duties of the same people, each having distinct and separate powers and charged with distinct and separate duties. No citizen of a State can look to either government for the measure of his allegiance or as the sole protector of his rights. The system is that the people of each State may with exact truth be said to have two constitutions—one their own separate constitution under which they exercise State powers and perform State duties solely, and according to their own judgment as to what is best for the common weal; the other, the Constitution of the United States, which is the common Constitution of each and of all the States, and under which each discharges Federal functions in connection with its sister States. Both are essential to perform the full measure of governmental functions and protect and secure the people in all their rights. Chief Justice Waite, in *United States* v. *Cruikshank* (92 U. S., p. 550), speaking for the Supreme Court, used this expressive language:

"The people of the United States resident within any State are subject to two governments—one State, one National. The powers which one possesses the other does not. They were established for different purposes and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad."

This great and fundamental truth is so often obscured and neglected in practice that we deem it our duty to endeavor to recall it to attention of the Senate and of the country.

THE UNITED STATES THE FINAL JUDGES OF THEIR OWN POWERS

It is no part of our purpose to reopen the question of State rights, as settled by the late war. Whatever of power was lost to the States by that conflict we acknowledge is lost irrevocably; whatever was gained in it by the United States is an acquisition that we shall not attempt to disturb. Whatever may be the mere historical truth as to the mode of the formation of the Federal Constitution—whether it was created by the people of the several States or by the people of the United States aggregated in one mass—it is now no longer a matter of dispute that the powers granted to the Federal Government by the Constitution of the United States are irrevocable except by successful revolution. It is also now established that the Government created by it is, through its judicial department, the final judge of the extent of all its granted powers which can by their nature come under review in a case in a court, and that the political departments of the Government are the final judges of the extent of all the other granted powers. The right of State interposition to arrest usurpation by the Federal Government, whether by nullification or secession, if it ever existed, has now gone forever. We concede this fully and unreservedly.

This great power of final arbitrament carries with it the highest and most solemn duty to judge carefully—impartially—not to usurp on the one hand powers not granted nor, on the other, to abdicate duties imposed on the Government by the Constitution. The people have a right to demand that the agents and officers of the Federal Government, which, though limited in the number of its powers, is supreme wherever its powers extend, shall be careful not to disturb or disarrange the scheme of government which they ordained nor alter the divisions of powers between the two governments which they have established.

THE STATES, ESSENTIAL BASES OF OUR SYSTEM

The Federal Constitution, whether framed by the people of the several States—the people of each State acting for their State—and as a political organization known as a State or not, came after the formation of the States. It is based on the previous existence and on the subsequently continued life of the States. Without States then existing it could not have been created. It had no force as a constitution till ratified by nine States and then only "between the States ratifying" it. After its ratification it could not have gone into operation except by and through the active agency and cooperation of the States existing as separate political entities, and acting as separate and distinct political organisms. No President could then have been, nor can now be, constitutionally elected except by electors whom, by the terms of the Constitution itself, "each State shall appoint in such manner as the legislature thereof may direct." No Representative could be elected, nor can now be, except by voters whose qualifications are to be fixed by the State from which he comes. Representatives are "apportioned among the several States," and Senators, "two from each State," are "chosen by the legislature thereof"; and each Senator and Representative must be "an inhabitant of that State in which (or for which) he shall be chosen." The words "State" and "United States" appear everywhere in the Constitution, in every article, and almost in every clause and sentence. Strike them from the Constitution and the Government would be without a name among the nations of the earth and the whole instrument would be unmeaning jargon, with no intelligent ideas left in it. The name of the Government itself created by the Constitution is "United States." The Constitution, as itself declares, was ordained and established "for the United States of America." The legislative power is vested not in a legislature or parliament or national assembly, but in "the Congress (that is, the meeting or assembling) of the United States." The executive power is vested not in a king or emperor or consul but in a "President of the United States"; all other officers are "officers of the United States." The "militia of the several States" are "called into the service of the United States," and not into the service of the Government, or the President, or the Congress. The judicial power of "the United States," not of the Government or Congress, is "vested" in courts provided for in the Constitution. These courts have jurisdiction "in controversies to which the United States shall be a party"; and between "two or more States"; and "between citizens of different States." Trials of crimes "shall be in the State" where committed. And "treason against the United States," not against Congress, the President, or the Government, or the Union, is committed only "by levying war against them or in adhering to their enemies." Essential powers are recognized in the States, and equally important powers prohibited to them by that name, and duties are imposed on them as "States."

In the attestation clause of the Constitution it is said: "Done in convention, by the unanimous consent of the States present," and his attestation is signed by George Washington, as President, "and deputy from Virginia," and by the deputies from each of the 12 States present, each being separately named, Rhode Island not being present. And in the tenth amendment it is declared that all the powers granted by the Constitution are "delegated to the United States," not to Congress, the President, the Government, or the Union. And in the fourteenth amendment the public debt is declared to be the debt "of the United States," and the "United States" are prohibited from assuming any debt incurred in aid of "rebellion or insurrection against the United States," and in the fifteenth amendment "the United States" and the several "States" are prohibited from denying or abridging the right to vote in certain cases.

Whilst it is true that the scheme of the Constitution was "to make us one people, with one common country, for all the great purposes for which it was established," as was said by Chief Justice Taney, it is also true, as declared by Chief Justice Marshall, in *McCulloch* v. *Maryland* (4 Wheat. 403), that "no political dreamer was ever wild enough to think of breaking down the lines which separate the States and compounding the American people into one common mass." And it is also true that the American people, considered as one common mass, and not as the people of the several States, cannot perform any single function or exercise any single political power without in effect revolutionizing our whole system.

We recall these familiar truths, found on the face of the Constitution and expressed in its very words, because their import and effect seem to have lost their significance in some quarters.

STATES ARE FREE, EQUAL, AND SOVEREIGN

It is undisputed that the States were free, equal, sovereign, and independent at the time of the formation of the Constitution; that each possessed all the powers which any government might rightfully possess. In the language of the Declaration of Independence, "they had full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

As such States they formed a Union under the Articles of Confederation, and as such they withdrew from that Union, each for itself, by a separate ratification of the Constitution of the United States, and contrary to the will of at least two of their number. As we have said, it is probably immaterial whether we regard the historical truth—that the States formed the Federal Constitution—as a constitutional truth or not, for the main questions which depended upon that are settled. The truth is undeniable that each State, or the people of each State in their separate capacity as organized political communities, organized into States, possessed at the adoption of the Constitution all governmental power. It is equally true that, possessing these powers, they had the right to alter their governments, "and to institute a new government, organizing its powers in such form as to them shall [should] seem most likely to effect their safety and happiness." They did so alter and organize it, delegating, each separate State, a part of its own

powers, to be exercised by the whole, i. e., the United States, and reserving each to itself separately, or to its people, the great mass of powers not delegated. The government thus formed was a government of each of the States, having jurisdiction to the fullest extent of the undelegated and unprohibited powers, and a Government of the United States. The Government of the United States meant no more than, and means no more now, than the common or general government of the States of Massachusetts, New York, Virginia, and the others united. The phrase "United States" means no more nor less than the 13 States then and the 38 States now, united for the purposes mentioned in the instrument of Union—the Constitution of the United States of America.

POWERS CONFERRED ON UNITED STATES SUPREME

The common or general powers thus conferred on the whole (not any power usurped) are necessarily supreme as against any adverse separate State action. This resulted logically from the mere fact of the establishment of a common constitution, since the surrender by each State, or by the people of each, of powers to a common agency to be exercised by such agency for the good of all the States, necessarily implied an engagement on the part of each and all to submit to the exercise of the powers so surrendered by the agency appointed for all and by all. A lawful refusal to do this would be in itself a disruption of the common government thus formed, since it would leave this common government without authority to do the very thing for which it was established. The declaration in article 6, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; * * * anything in the constitution or laws of any State to the contrary notwithstanding," is nothing more than the expression of what, without it, was an undoubted truth.

Speaking of the supremacy of the Government of the Union in *McCulloch* v. *Maryland* (4 Wheat. 405) Chief Justice Marshall said:

"This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all, it represents all, and acts for all."

But whilst this is true, it is also true that this supremacy of the Constitution and of the laws and treaties authorized by it is expressly limited within the line which bounds the delegated powers. Beyond this the Government of the United States has no power whatever, and its acts outside of and beyond these powers are in law simply null, mere nothing. We quote on this point the expressive words of Chief Justice Waite, speaking for the Supreme Court in *United States* v. *Cruikshank* (92 U. S., p. 550):

"The Government thus established and defined is to some extent a Government of the States in their political capacity. It is also for certain purposes a Government of the people. Its powers are limited in number, but not in degree. Within the scope of its powers, as enumerated and defined, it is supreme and above the State; but beyond it has no existence."

Mark the expression—beyond its enumerated and defined powers "it has no existence."

THE UNION IS VOLUNTARY AND OF EQUAL STATES

Another great truth lies at the foundation of the Constitution, and which must never be forgotten or obscured in considering the relations of the several States under it with each other and with their common Government—the Government of the United States. It is that this Union under the Constitution was in its formation the voluntary association of free and equal States, each free to go in or to stay out; each equal in its Federal and in its reserved rights; equal in dignity; equal in all political capacities. Each State acceding to it (or the people of each State, if that expression be preferred) claimed the capacity to discharge all its Federal duties arising under the Constitution, as well as its capacity to exercise all the powers of government reserved to it. This claim was acknowledged by each and by all, and was, in fact, the very basis of the Union as it was formed. If any one of the then existing 13 States had contrary convictions which rendered association and union with any of the others undesirable, it had the undoubted right to refuse accession to the Union. It had the undoubted power to decide this question for itself, and did decide it irrevocably when it ratified the Constitution. That decision involved and solemnly adjudged the essential truth that its co-States were such as it claimed itself to be, capable and willing to perform both their Federal and their separate State functions without the supervision or interference of others. As to new States, each original State which had acceded to the Union agreed by the Constitution itself—the supreme law of the land—to abide by the decision of the Congress of all the States, and each new State in accepting admission into the Union made the same concessions and admissions as to all the other States.

This great and fundamental truth, if it needed further support, has it in the terms of the Constitution itself. That they all agreed should be the supreme law of the land. That instrument not only owes its existence to the action of the people of the several States, but the continuous operation of the Government it established could come only from their voluntary action. The Constitution imposed duties on them the continued performance of which was essential to the Government, as has been shown. It contained no provision for a failure of any State to discharge its Federal functions, but it assumed that all would, and it left to each as a matter for its sole concern the discharge of its own separate State functions. It contained no provision for disfranchising States for a neglect of their duties, nor for compelling the States to perform them. It recognized no inequality and no incapacity, no contumacy in States, and made no provision and conferred no powers for such cases.

It imposed no restrictions or limitations upon the rights and power of one State that were not equally imposed on all the others. It prescribed no duties to the States with reference to their undoubted rights and powers over their own citizens. It secured no rights to citizens against adverse action or adverse nonaction of their State, except in the imposition of prohibitions on the exercise of a few arbitrary and despotic powers of government, which by the common consent of free people were deemed unsafe and unfit to be exercised by any government, and which we shall notice more particularly hereafter.

In the performance of this grand work—the creation of the Constitution of the United States, and of the Union under it—the grandest ever performed by any of the human race, there was, in the processes of its formation, in its express or implied provisions, no arrogated superiority, no assumed mastery on the part of any State, or the people of any State, over any other, and no distrust in the ability and good faith of any State or its people.

Massachusetts did not say to Virginia, "We distrust your ability or willingness to perform your Federal duties, or to govern in all that has not been surrendered by you to the common Government, nor prohibited to you and all other States alike;" nor did Virginia doubt Massachusetts in any of these things. There was mutual trust and confidence all around and on all sides. Without these the Constitution could not have been formed, and without them cannot be preserved. This confidence and trust were manifested in all that was done, and were attested and sealed by the declaration in the Constitution that it was the supreme law of the land, binding on all States, all magistrates, and all persons, and binding also on the agencies, the magistrates, the officers of the common Government.

This supremacy of the Constitution is universal, all-pervading, binding equally as to its negations, the reservations to the States as to the powers delegated to the Union, the things granted and the things not granted; binding as well to destroy, to make null, all that might be done or assumed to be done by the General Government outside of and beyond its powers, as to invalidate any State action within this exclusive domain. It was a double guaranty, as strong and as explicit against Federal usurpation of powers not granted as against State aggression on the delegated sovereignty of the Union.

We have now seen how the Constitution was formed, the spirit which animates its every clause and letter, the temper, the good faith of men and States, their confidence in their fellow men and co-States, the concession by each and all the States of the capacity and willingness of the people of each to discharge their Federal and National duties, and to exercise justly and fairly their reserved powers, and the entire absence of any provisions giving either to the common Government or to any of the States power to interfere in or control the administration in any State, of its reserved powers or jurisdiction. We may pause a moment to contrast this with the provisions of the present bill, which repudiates all this and seeks to establish an inquisition under national authority into the exercise by some of the States of their exclusive internal domestic jurisdiction. This inquisition is degrading to the States in which it is expected to be carried on; it impeaches their capacity and willingness to perform their separate and exclusive functions; it asserts, in the shape of a law, a supercilious and arrogant superiority on the part of some States over other States; it usurps a jurisdiction unwarranted by the Constitution.

POWERS OF THE UNITED STATES ARE DELEGATED

Looking to the whole scheme of our complex system of Federal and State governments, we find that its primal, fundamental principle, the key to its exposition is, that the powers possessed by the United States are "delegated"—that is, given or granted to them—by some political organism or organisms and are in no sense inherent or original. Before any of these powers were thus granted there were no powers in the United States; in fact, no United States existed. The United States, as they now exist as a Government, were created by the Constitution. That instrument, in the act of making the States united under it, dissolved their union under the Articles of Confederation.

The tenth amendment, adopted almost contemporaneously with the Constitution, and designed to put into constitutional form a great truth, then recognized by all, so as to prevent mistake or misconception in all after times, expressly declares that the powers possessed by the United States are "delegated," and all other powers not "prohibited" to the States are "reserved," not granted, not given, but "reserved" to the "States respectively"; not to the States in a mass, or aggregated, or united, but to the States "respectively," or to the people. The powers are not even said to be "vested" in the United States, when reference is made to their origin. They are only "delegated," and then they are said to be "vested" in the Government, and in its various departments as a consequence of this delegation. The powers thus "delegated" are not the great mass of the powers of government, with exceptions in favor of the States, but they are enumerated, specified, written in the Constitution itself, and defined and limited by it.

THE GENERAL SCHEME OF THE CONSTITUTION

The scheme of the Constitution was to make us "one people, with one common country, for all the great purposes for which it was established." (See Chief Justice Taney in *Passenger Cases*, 7 How. R. 283.)

These great purposes are expressed in the Constitution itself, in the powers delegated by it to the United States. These powers are plenary and exclusive as to all that concerns the people and States in their relations with foreign powers, both in peace and in war, including the making of treaties, the receiving and sending of ambassadors, ministers, and consuls; making war and concluding peace; intercourse and commerce with them; the protection of our people in foreign countries and outside of the jurisdiction of any State and on the high seas.

Secondly. The Federal powers extend to the regulation of relations between the States themselves and the citizens of each with the citizens of the others and between each of the States and the United States, covering commerce among the States, compacts between two or more of them, the duty of surrendering fugitives from justice and labor, the force and effect in other States of public records and judicial proceedings of each State; "the securing to the citizens of each State the privileges and immunities of the citizens of the several States," when in the jurisdiction of any State of which they are not citizens, leaving, however, to each State to determine and define the rights and privileges of its own citizens, and securing only these same privileges so defined by a State to citizens of other States when they are within its jurisdiction.

Thirdly. The power and duty to guarantee to each State a republican form of government, and to protect it from invasion or, on application of the State, from domestic and foreign violence. These were the great purposes for which the Constitution was formed, and adequate powers to attain them were granted.

All other powers delegated to the United States are either merely auxiliary to these great ends and for the support and maintenance of the common government or they are such as can conveniently and properly be exercised only by a government common to all the States. These auxiliary powers relate to the establishment of a uniform system of bankruptcy and naturalization laws; the power to coin money, to regulate its value, and the value of foreign coins in circulation here; to fix the standard of weights and measures; to grant patents and copyrights; to establish post offices and post roads; the power of taxation; to punish counterfeiting of the current coin and securities of the United States; to punish piracies and felonies on the high seas and offenses against the law of nations; to raise and support armies and support and maintain a navy, and certain powers over the militia.

These powers, in general terms, include all that are delegated to the United States. If we stop and consider them, we will see how few they are—great indeed in importance, unlimited in degree, but very limited in number. If we abstract from these powers all that relate to our intercourse with foreign nations—all that concern the relations of the States with each other, in their character as States, and their relations to the Union; all that relate only to the giving force, efficacy, and support to the United States in their exercise of their other powers—we will see how infinitely small in number are all the remaining powers, which concern only the rights, privileges, and convenience of private persons—private citizens when in the jurisdiction of a State.

These powers are:

(1) The securing to the citizens of the several States the privileges and immunities granted by any State in whose jurisdiction they may be to its own citizens.
(2) Jurisdiction over bankruptcy.
(3) Jurisdiction over naturalization.
(4) Jurisdiction over the currency.
(5) The power to establish post offices and post roads.

We look in vain to any of these powers for the power to enact this bill. But along with these powers come provisions which show the soul and spirit of the Constitution, and without which the Constitution becomes either a lifeless corpse, or, having energy and vitality, is an instrument only of oppression and wrong. These provisions recognize the absolute equality of the States, and secure fairness and impartiality in the exercise of the powers granted by the Constitution. Thus, direct taxes are required to be apportioned among the States according to their population, and all duties, imposts, and excises are required to be uniform throughout the United States; no preference is allowed in any regulation of commerce or revenue to the ports of one State over the ports of another; the levying of a tax on any article exported from any State is also prohibited, whereby the dangerous power of taxing articles mainly produced in one State or section and not in others is denied to the Government.

And then there is the great provision in article 5, which secures absolutely and forever the equal suffrage in the Senate of each State against even an amendment of the Constitution. Under this guarantee of equality Delaware, Rhode Island, and Nevada each have the same voice in this body as the great State of New York, and under it the six New England States, with a population entitling them only to 24 Representatives out of 325 allotted to all, have 12 Senators, whilst all the other States, with a population entitling them to 301 Representatives, have together only 64 Senators. New England has one Senator for a population entitling her to two Representatives, whilst the remainder of the States have one Senator to a population represented by 4.54 Representatives, or more than twice as much per capita of population.

POWERS PROHIBITED TO THE STATES

The scheme of the Constitution embraces not only a division of powers between the several States and the United States by delegation of certain specified powers to the latter, and a reservation of the others to the States, but it includes also the prohibition of certain powers to both. These powers, so far as they relate to persons, were deemed despotic in their nature, unjust in their operation, and contrary to the genius of free government; and hence, whilst prohibiting their exercise by the Federal Government, the States also surrendered them as a pledge of their fidelity to the great principles of republican liberty. Three of these powers related to the lives and liberties of persons, namely, bills of attainder, ex post facto laws, and the suspension of the great writ of habeas corpus; one to property, viz, laws impairing the obligation of contracts; and the other related only to the quality of persons in a free government, namely, the bestowing titles of nobility. These powers were refused to both. The power over contracts, however, was allowed to the Federal Government, indirectly in its power over bankruptcy.

There were some other prohibitions to the States, but they were manifestly introduced for the purpose of preventing a conflict between State powers and Federal powers, which might, but for the prohibition, have been concurrent. In all these there is not a pretense for the claim of the Federal Government to intervene between a State and its citizens for the protection and security of the great fundamental rights of persons and property and the pursuit and acquisition of happiness, all these being left to the care and protection of the States, except only in the four cases of habeas corpus, bills of attainder, ex post facto laws, and laws impairing the obligation of contracts. Of all the civil rights of men, and all the rights of person and property, only these above named, and no more, are entitled to Federal protection in favor of a citizen against his State; and this protection extends only to the prevention of State action in violation of them, as will be shown more fully hereafter. And not one of these rights is secured against State action, even in favor of citizens of another State, except to this extent: That citizens of other States should have from each State the like protection that it affords to its own citizens.

THE FIRST EIGHT AMENDMENTS

What we have said covers in general terms a description of the powers delegated to the United States and of those which were reserved by the States, as they existed under the Constitution when it was framed. It will be noted that whilst the Constitution contained an express grant and a specific enumeration of the powers vested in the Government of the United States, and that it was understood on all sides that no others could be exercised, except only such auxiliary powers as are necessary and proper to carry the enumerated powers into execution, yet it was, out of abundant caution, deemed necessary to insert in the Constitution certain prohibitions on the Federal Government. These prohibitions were deemed necessary lest Congress should claim these prohibited powers as necessary and proper in carrying out the delegated and enumerated powers.

It will be seen that not one of the powers prohibited is of the nature of a substantive and independent power, to be exercised solely to attain some end outside of the enumerated powers—some end which in itself and by itself was an object to be desired. But our forefathers had been familiar with bills or petitions of right in which certain great and fundamental rights were excepted out of the powers of government. It was complained that no such bill of rights was a part of the Federal Constitution. So in the very first Congress assembled under the Constitution, composed largely of the great statesmen who had been members of the Convention which framed the Constitution and of members of the several State conventions which ratified it, certain amendments were proposed. All of them which were ratified, as has been firmly settled, have reference solely to limitations and restrictions on the powers of the United States, the design and intent of all of them being to prevent Congress, in the exercise of its implied powers, from passing any law of the kind prohibited in the amendments.

This view is fully sustained by Mr. Madison's great speech in the House of Representatives advocating these amendments. (See Annals of First Congress, p. 432.) All the propositions of amendment looking to a restriction on the power of the States, including one offered by Mr. Madison securing against State action religious liberty and freedom of the press, and trial by jury, were rejected, thereby again affirming that all the great natural rights of man were to be left solely to the States for their definition and their security and protection.

RIGHTS SECURED AGAINST FEDERAL ACTION BY THESE AMENDMENTS

It will tend greatly to assist in understanding clearly and fully the nature of our system, and to mark the line clearly between State powers and duties on one hand and Federal powers and duties on the other, if we note here in general terms the great and essential rights which were secured against Federal invasion by these amendments, and yet were left wholly at the mercy, the will, and discretion of each of the several States, fixing, as they do, beyond controversy or dispute, the great underlying and fundamental principles of our system, that all civil rights, all rights of person and property, are left solely to the States.

These amendments, whilst leaving to the States unrestricted power, prohibited to the United States any power over and guaranteed the following against Federal action:

Freedom in religious belief and worship; freedom of speech and of the press; the right of petition; the right to bear arms; security against the quartering of soldiers in the people's houses; security against unwarrantable searches and seizures, against general warrant; security against trial for capital or infamous crimes unless on accusation by a grand jury; security against being put twice in

jeopardy for the same offense; security against being compelled to be a witness against oneself; security against being deprived of life, liberty, and property without due process of law; security against the taking of private property for public use without just compensation; the right of trial by jury in civil and criminal cases; the right of the accused in criminal trials to be confronted with the witnesses against him, to have compulsory process for witnesses in his favor, and the assistance of counsel in his defense; security against the requirement of excessive bail, and the imposition of excessive fines, and the infliction of cruel and unusual punishment.

THESE GREAT RIGHTS ARE NOT PROTECTED AGAINST STATE ACTION

All these great rights are secured by the Constitution of the United States against Federal aggression only. So far as that Constitution and the powers of the Government established by it are concerned, these great rights are left for recognition, protection, and security to the States, which have sole and exclusive jurisdiction over them. They were then, and are now, in fact, protected against the action of the State governments and State agencies in all the States; but this protection and security came from provisions in the constitutions of each State, which the people of that State had of their own will ordained and established, and which that same people could alter and change at their pleasure, and thereby destroy the protection.

SURVEY OF THE WHOLE SCHEME

And now, if we will take a survey of the whole, we see that this grand scheme of free government for the security of the rights and promotion of the welfare and safety and advancement of the happiness of the people of the United States is, in short, this:

First. A common government of all the States with exclusive jurisdiction and powers as regards foreign nations and all intercourse with them; with jurisdiction over the relations between the States as States and over commerce among the States and between them and foreign nations; over certain very limited powers whose influence and force ordinarily extend beyond State lines and could more conveniently be exercised by the common government; over the securing to the citizens of each State, when in the jurisdiction of another State, the same great fundamental rights which the latter State grants to its own citizens; a denial to the States of certain despotic and arbitrary powers in respect to personal and private rights, which are incompatible with free institutions, and the denial to the common government, in the exercise of its granted powers, the authority to invade certain great rights of private persons, as we have enumerated them; that all the powers of the common government were "delegated" and enumerated and all other governmental powers, not prohibited, were "reserved" to or kept back by the States; that the States—as they then existed, possessing all the power then reserved to them—were essentially the basis of the Federal system, without which it could not have the beginning of life, nor any subsequent existence; that these States were equal in power and dignity, and this equality is the essence of the whole scheme; that each was adjudged to be capable of discharging its Federal functions and of exercising without control or restraint from any quarter its reserved powers.

Second. That in this great mass of reserved powers in the States were embraced not only the protection and security of all the rights of life, liberty, and property, and the pursuit and acquisition of happiness, but also the unrestricted power to define and determine what these rights are, their extent and limit, and all the processes of law for their vindication. And in this mass of reserved powers are also all jurisdiction over the conduct of men, the conservation of morals, and the preservation of the public health. That as to all these the reserved power of each State was and is absolute, without other restriction than it shall itself see proper to impose on its own government, so far as its own citizens are concerned, and the same rule prevails as far as concerned citizens of other States within its jurisdiction, except only that by the Federal Constitution it is so bound that the measure it metes to its own citizens the same shall be meted to them.

This outline of the matters embraced in the reserved powers of the States would ordinarily be sufficient; but in this day, when there exists so great a tendency to belittle and to obscure the powers, duties, dignity, and importance of the States, and to look to the Federal Government to rectify all wrongs, to remedy all evils, to supply prosperity and to check adversity, to bestow wealth and to remove poverty, and to these ends to invoke its powers over interstate commerce and its powers of internal and external taxation, in order to build up one interest at the expense of another, to break down one rival interest for the benefit of another, to take charge of sanitation and inspection in the States, to control all that pertains to the good order and morals of the people, to grant subsidies and bounties from the common treasury or the common property to advance private interests, it may be well to specify in detail some of these great powers of government which under our constitutional system, are reserved exclusively to the States. This we will do at the risk of repeating in detail what has been stated in more general terms.

SOME OF THE GREAT POWERS RESERVED TO THE STATES

In this grand jurisdiction thus reserved to or kept by the States is the entire power over all contracts; who may make contracts, and who are incapable of making them from want of mature age, or of mental capacity, or of freedom of will; the form in which they must be made; the evidence to establish or defeat them; their nature and obligations; the consequences of default in complying with them, and the sole remedies to enforce them amongst citizens of the same State. The sole power over marriage; who can contract it; the forms to be observed in celebrating it; the relative rights, powers, and duties of husband and wife toward each other and in the community; the causes and manner of its dissolution, and all the relations and mutual duties and powers and rights of parent and child; and superadded is the institution of the family (the unit and basis of our civilization) with the right to acquire and hold against adverse fortune the homestead for its shelter and conservation. The titles and tenures to all property of every kind; the modes and forms of its acquisition and transfer; how the right to it may be lost by neglect or acquiescence in wrong; what are injuries to it and the nature and extent of redress for such injury; by what rule it shall be enjoyed in life, and on the death of the owner how it shall descend and be distributed, and on what failure of blood it shall escheat to the State; the right to dispose of it by will, and by whom and in what forms wills must be made; whether entails or primogeniture shall be allowed, and to what extent property may be held in mortmain by corporations, and what rights, if any, corporations created in other States or in foreign nations shall enjoy in its jurisdiction; the civil status of all its people as to legitimacy or the contrary as affected by their birth, their education in youth, their civil rights, their qualification to vote and hold office, and their conduct in life, and their protection and security in life, liberty, property, and reputation; crimes against property, larceny, robbery, burglary, arson, malicious injuries and trespasses, cheats, embezzlements, forgeries, and the like; crimes against the person, assaults, batteries, mayhems, murder, seductions, false imprisonment, and all others; offenses against reputation and character, slander and libel; offenses against good order, good morals, and the health of the community; the great right of the free exercise of religious worship and freedom of religious belief and freedom of speech and of the press; all these and more of like character are solely within the jurisdiction and power of the States and depend on their laws and Government for preservation and protection. In short, the State authority meets the child at his birth, attends him through infancy, manhood, and old age, and at his death, and is sufficient, if wisely exerted, to secure to him all the blessings which make life desirable in this world, and the opportunity of gaining for himself, in his free exercise of his religious belief, a blissful hereafter.

THE SUPREME COURT AFFIRMS THIS PRINCIPLE

The Supreme Court, in the *Slaughterhouse Cases* (16 Wall. R. 76), referring to and quoting from the great judgment of Judge Washington in *Corfield* v. *Coryell* (4 Wash., C. C. R. 371), and speaking of the great and fundamental rights which are left by the Constitution under the sole guardianship and protection of the States, said they are comprehended under the following general heads:

"Protection by the Government, with the right to acquire and possess property of every kind, and pursue happiness and safety, subject, nevertheless, to such restraints as the Government shall prescribe for the general good of the whole."

And the same Court, in the same case, referring to *Ward* v. *Maryland* (12 Wall. 430), say:

"This definition [above quoted from Judge Washington] was in the main adopted there, and it embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental, and they have always been held to be the class of rights which the State governments were created to establish and secure."

In the same case, the Court, treating of these same rights and exhibiting some impatience that a contrary opinion should be expressed, said:

"It would be the vainest show of learning to attempt to prove by citation of authority that up to the adoption of the recent amendments (thirteenth, fourteenth, and fifteenth) no claim was set up that those rights depended on the Federal Government for their existence or protection beyond the very few express limitations which the Federal Constitution imposed on the States, such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of privileges of citizens of the States, as above defined, lay within the constitutional and legislative powers of the States and without that of the Federal Government."

This is authority enough for this great and fundamental principle of the Constitution, which indeed is so patent and clear that the Supreme Court said it needed no authority for its support.

But this bill, sanctioned and recommended by the majority of the Committee on the Judiciary, attacks it—denies it. We will, right here, add another authority, and hereafter many more to support the Constitution against the assaults made on it by the provisions of the bill we are now considering. The authority we now refer to is the judgment of the Supreme Court in *United States* v. *Cruikshank* (92 U. S. Rep., p. 554). That great tribunal, in denying the validity of the statute of the United States providing for the punishment of a conspiracy to murder and imprison within a State, through Chief Justice Waite, said:

"The rights of life and personal liberty are natural rights of man. To secure these rights, says the Declaration of Independence, 'Governments were established among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons in their jurisdiction in the enjoyment of these 'inalienable rights with which they are

endowed by their Creator.' Sovereignty for this purpose rests alone with the States."

It must be noted that both of these cases were decided after the adoption of the three recent amendments to the Constitution, and the last quotation was a judgment on the meaning of the Constitution as amended by them. But we will pursue that point no further now, our object being, in the regular and orderly discussion of this subject, to ascertain the meaning, force, and effect of the Constitution prior to the amendments, and then to note what changes they made in it.

DUTY COMES FROM POWER

We have seen what are the powers of the two Governments, State and Federal. It is easy now to see their duties. Power to protect and duty to protect are inseparable, the latter following and deriving its source from the former. For power we must look to the Constitution; when it is found, the duty is also found; but the duty never extends beyond the power. Said Chief Justice Waite in the last case cited: "The duty of a government to afford protection is limited always by the power it possesses for that purpose."

THAT DUTY COMES FROM POWER REVERSED

So far our way is plain. There are no doubts, no chances for mistake. The line separating the powers and duties of the Federal Government from the powers and duties of the State governments is plainly marked, and it is plain that the power to pass this bill does not lie on the side of the Federal Government.

But in the course of time the great and essential rule for the interpretation of the powers of a government to which we have just adverted, and which received the sanction of the Supreme Court in the language we have just quoted, that the duties of a government were limited by its powers, was in some sections of our country being reversed and the powers of our common Government were derived not from the Constitution and its delegations of power; but men, looking at wrongs and evils, or supposed wrongs and evils, exclusively from the standpoint of their moral nature, their own conception of right and wrong, derived the power to act from what they thus concluded it was their moral duty to do. And in this way, and founded on these principles, there arose a party in this country composed of men whose moral nature rebelled against all human wrong and incited them to aggressive warfare for its removal, and who in their zeal were guided alone by their conviction that wrong, sin, "the sum of all villainies," was tolerated and protected in certain States of the Union in which African slavery existed. They did not stop to inquire whether the Federal Government had the power to interfere. They did not consult the Constitution for Federal power, and, finding it, then deduce the duty to interpose. To them the wrong was patent, their duty clear, and as a consequence the power existed.

THE CONSTITUTION BINDING IN ALL ITS PARTS

We shall not pursue the slavery agitation further. Suffice it to say that war came. It matters not for the purposes of this argument which side was right. The war ended, and as a consequence of it came the three amendments to the Constitution—thirteenth, fourteenth, and fifteenth. How they were placed there is wholly immaterial. They are there now as a part of the supreme law of the land. They are binding on all of us. Whether they were wisely or justly placed in the Constitution we shall not stop to inquire. Our inquiry is as to their meaning and force, and not into the methods of adoption. What we shall say in opposition to this bill we shall claim under the Constitution as thus amended; and in pleading as we now do for faith in compacts between the people of the States, for obedience to the Constitution in all its parts, and in its every syllable and letter, in the original and in the amendments, we do not propose to disparage it in any respect whatever.

It is to us no "covenant with death," no "agreement with hell," but the supreme law of the land, and as such we obey it in all its parts. We know of no higher law for American Senators, or for American citizens, than the Constitution. We know of no duties of the Federal Government beyond the powers it confers, and we recognize as binding on us, in letter and spirit, every duty imposed by it on the Congress of the United States.

THE FORCE OF THE THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS

We have now seen what was the nature of our system of government, the relative powers and duties of the Federal and State Governments under the Constitution, as it existed before the three amendments were adopted; and that under it, as it then existed, there was no power to pass this bill. We inquire now, whether the needed power has been conferred by these amendments. The task will be easy, since from this point our way is marked out clearly by judicial decision. We shall do little more than refer to, quote from, and apply these decisions.

THE SLAUGHTERHOUSE CASES

Happily for the country the first case in which the construction and meaning of these amendments came before the Supreme Court was one in which southern white men were seeking redress against one of those pernicious statutes then common in the Southern States by which those possessed of the State governments were making traffic and merchandise of their powers for the purpose of enriching themselves and their friends, namely, the *Slaughterhouse Cases* in 16 Wall. R. There was nothing in these cases to excite alarm or prejudice so far as the colored race was concerned and nothing to prevent a calm and careful consideration of the amendments. It is remarkable, too, that a Southern States' rights jurist of unequaled powers and great purity of character appeared before the Court, pressing for a construction of the amendments which, if adopted, would have been the fatal precedent upon which could have been built and would have been built a system of legislation which would have left, in the Southern States at least, no other control over their internal affairs than it should please Congress to give them. It is remarkable, too, that this construction was concurred in by the two Democrats who then held seats on the Supreme Bench, and that the narrower, yet the plainly true, construction of the Constitution was upheld by Republican judges only and vindicated in an opinion of unsurpassed ability.

In this opinion the great judge who drew it up, referring to the tendency created by the war in favor of more enlarged powers of the Federal Government, thought it necessary to say:

"But however pervading this sentiment, and however it may have contributed to the adoption of the amendments, we do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of States, with powers for domestic and local government, including the regulation of civil rights, the rights of person and property, was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations upon the States and to confer additional powers on that of the Nation."

The fourteenth amendment provides, among other things, that "no State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States." And the main effort in that case by the appellants was to bring within the scope of the Federal Government jurisdiction to protect citizens against the exercise by a State legislature of a power to grant to a corporation an unjust and odious monopoly of the business of slaughtering livestock for food, and of receiving at their landing all livestock shipped to the parishes in which the city of New Orleans is situated—a territory embracing 1,154 square miles. It was urged in their behalf that this law deprived over 1,000 persons of the right to follow their vocation as butchers—a right which they had as citizens of the United States.

The Court, however, denied this claim, holding that there were two citizenships in our system—one of the United States and one of the State in which a citizen of the United States resides—that these two citizenships pertain to all citizens of the United States, who were also residents of any State; that the rights, privileges, and immunities of such a person as a citizen of the United States were separate and distinct from his rights, privileges, and immunities as a citizen of a State; that protection of the former alone was committed to the Federal Government, and of the latter to the State government; that each citizen of a State owed a double allegiance, namely, to the Federal Government, and to the State in which he resided; that he looked to the one for the security and protection of a part of these rights and to the other for protection in all the others; that both governments were parts of a complete whole, and both necessary to the protection and security of the citizen in all his rights, privileges, and immunities.

The Court then proceeds to enumerate the rights which pertain to a citizen in his character of citizen of the United States, and which we will here reproduce, so that by considering the actual examples a clearer insight may be had into their nature than could come from definition and description only.

RIGHTS OF CITIZENS OF THE UNITED STATES ENUMERATED

They are as follows:

The right to come to the seat of Government to assert any claim he may have upon that Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions.

The right of free access to its seaports, through which all operations of foreign commerce are conducted; to the substreasuries, land offices, and courts of justice in the several States.

The right to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign Government.

The right to peacefully assemble and petition (Congress) for a redress of grievances, and to the writ of habeas corpus.

The right to use the navigable waters of the United States however they may penetrate the territory of the several States.

All rights secured to citizens by treaties with foreign nations.

The right to become a citizen of a State by residing in it.

Then, proceeds the court,

"There are rights which pertain to a citizen in his character of citizen of the United States, and are therefore subject to Federal jurisdiction and power, which grow out of prohibitions in the Constitution of the United States on State action; of such is the right to be absolved from all the consequences of bills of attainder, ex post facto laws, and laws impairing the obligation of contracts enacted by the States; and the right secured against prohibited State actions, as expressed in the three new amendments to the Constitution."

The court, on these principles, refused to give relief against the legislation of the State of Louisiana complained of.

EFFECT OF THE GREAT JUDGMENT IN THE SLAUGHTERHOUSE CASE

This great judgment was the first beacon light that flashed across the gloom and darkness of constitutional exposition produced

by the events of the war. It recalled the great principles on which the Constitution was based, and pointed out the path of safety to be pursued. It is so clear in its argument, so convincing in its reasoning, that men wonder on reading it how they ever entertained any doubt about the true meaning of the Constitution as affected by the amendments.

POWER CONFERRED BY THE AMENDMENTS RELATES ONLY TO STATE ACTION

This case was followed by others, in which the principles announced in the Slaughterhouse cases were followed to their logical conclusion in strict accord with the terms of these amendments. So far as the present argument is concerned it is only necessary to say that the power conferred on the Federal Government by these amendments was held to be the only power to enforce the prohibitions on State actions contained in them.

These amendments, so far as they relate to the questions now involved, consisted wholly of negations—prohibitions always on State action and sometimes on Federal action.

The language of the fourteenth amendment is:

"No State shall make or enforce any law which shall abridge the privilege and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And the fifteenth amendment ordains as follows:

"The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude."

It is now firmly settled that these provisions are directed solely against State laws and State action, through persons or agents clothed with State authority. It is also settled that the power conferred on Congress to enforce these provisions is a power only to enforce the prohibition against State action. That the rights conferred on persons under them are not positive, original rights, but the right only to exemption from, and protection against, the prohibited State action. And the power of Congress to interfere in any case is purely a power of correction, a power to give redress against a prohibited State action, that the exercise, the actual exercise of efficient power by Congress, under the amendments, presupposes State action of the kind prohibited; and until there be such prohibited State action, the power of Congress is wholly dormant, and without such action really being taken, somewhere or at some time, the power of Congress would sleep forever.

In no case under these amendments, so far as the present controversy is concerned, can the power of Congress be made to reach, either for punishment or correction, or redress in any way, civil or criminal, the acts of private individuals. On this last point the controversy was long between a sectional majority in Congress and the Constitution, but in the end the Constitution triumphed fully, completely. It would be interesting to trace the progress of the decisions of the court from the first to the last case in evolving, as the facts of each case warranted, the true meaning of these amendments. To do this would detain us too long. But it is well here to quote some of the expressions of the judgments in these cases, showing truths of a fundamental character.

QUOTATIONS FROM THE SUPREME COURT

United States v. *Cruikshank*

Chief Justice Waite, in delivering the opinion of the Supreme Court in *United States* v. *Cruikshank* (92 U. S., p. 555), speaking of the provisions in the fourteenth amendment, prohibiting the States from denying to any persons within their jurisdiction "the equal protection of the laws," said:

"This provision does not, any more than the one which precedes it, and which we have just considered (namely, the provision prohibiting a State from depriving any person of life, liberty, or property, without due process of law), add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism; every republican Government is in duty bound to protect its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. The amendment (the fourteenth) guarantees this, but no more. The power of the National Government is limited to the enforcement of the guaranty."

And on this ground the Supreme Court in that case held that the United States had no power to punish a conspiracy to commit murder, or to falsely imprison a citizen, and none to punish false imprisonment or murder itself. This case was decided in 1875, and was the logical outcome of the principles announced in the Slaughterhouse cases, decided in 1872, and *Bartemeyer* v. *Iowa* (18 Wall. 130), *Miner* v. *Happersett* (21 Wall. 162), *United States* v. *Reese* (92 U. S.), also decided in 1875.

In the same line was the decision in *Strauder* v. *West Virginia*, decided in 1879.

Virginia v. *Rives*

At the same term was decided *Virginia* v. *Rives* (100 U. S. R., 313), in which the Supreme Court remanded to the State court a criminal case which had been removed to the Federal court upon the ground that the subordinate State officers, in violation of the law of the State, had discriminated against the accused, who was a colored man, in declining to summon on the grand jury which indicted, and on the panel which was to try him, any person of his race. Justice Strong, speaking for the court, and quoting all the provisions of the first section of the fourteenth amendment (except the first clause, which defined citizenship), said:

"They all have reference to State action exclusively, and not to any action of private individuals. It is the State which is prohibited from denying to any person under its jurisdiction the equal protection of the laws, and hence the statute above referred to (secs. 1777 and 1778 of the Revised Statutes) are intended for protection against State infringement of those rights."

Ex parte Virginia and Neal v. *Delaware*

At the same term of the Court it was decided the case of *Ex parte Virginia* (100 U. S.). In this case the Supreme Court affirmed the constitutionality of an act of Congress punishing a subordinate State officer, acting as such, and exercising a State power, conferred on him by State laws, for denying to a colored man the equal protection of the laws, but the Court reaffirmed, in the most explicit language, the doctrine, that the first section of the fourteenth amendment referred alone to State action. On this point the Court repeated:

"The prohibitions of the fourteenth amendment are directed to the States, and they are to a degree restrictions on State power. It is these (restrictions on State power) which Congress is authorized to enforce, and to enforce against State action."

The Court further held that this power of Congress to enforce the prohibitions and restrictions on State action extended to all kinds of State action, "however put forth, whether that action be executive, legislative, or judicial," and therefore it was in the power of Congress to punish State ministerial officers who, clothed with State power, exercise that power in violation of these prohibitions on State action. On this point the Court used this language:

"Whoever, by virtue of public position under a State government, deprives another of life, liberty, or property, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibitions, and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State."

Neal v. *Delaware* (103 U. S. 370), decided in 1880, follows in the same line.

Up to this point it seems clear enough, in fact, beyond controversy, that the power conferred on Congress by the amendments did not extend to dealing with private persons for their individual acts, in contravention of the rights which followed from the prohibitions in the amendments. But so tenacious is usurped power of its unjust and unconstitutional prerogatives; so strong the sentiment that power comes from supposed or assumed moral duties, and not duties from power granted by the Constitution; so long had the Southern States suffered without successful resistance from unconstitutional dominance in their domestic and internal affairs, reserved to them by the Constitution, that the devilish spirit of intermeddling would not down at these repeated decisions of the Supreme Court. This spirit takes possession of even men of good intentions, if they have associated with it an intense egoism and strong convictions of their own superior personal purity and wisdom and a distrust of the virtue and capacity of others, and it arrogates to itself the guardianship and control of the world. So it became necessary for the Supreme Court to make another decision, reaffirming again and enforcing the true principles of the Constitution, as they had been announced in their former judgments.

United States v. *Harris*

In 1882 the case of *United States* v. *Harris* (106 U. S., p. 629) was decided. That case was an indictment under section 5519, Revised Statutes, which was in the following words:

"If two or more in any State or Territory conspire, and go in disguise upon the highways or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving to all persons within such State or Territory the equal protection of the laws, each of said persons shall be punished by a fine, and so forth."

The indictment charged certain private citizens of Tennessee with taking certain other citizens of the State from the custody of the sheriff who held them for trial on a criminal charge, and with beating, wounding, and maltreating them, and killing one of them, and thereby depriving them of an equal protection of the laws of the State. The Supreme Court, as if wearied by the compulsory reiteration of principles already well settled, delivered a very elaborate and learned opinion, drawn up by Justice Woods, and again confirmed the true construction of the Constitution already fixed by the preceding cases. The Court deemed it necessary again to enforce the old maxim of constitutional construction by quoting from Judge Story that which, up to the war, had never been doubted as a fundamental canon of constitutional law, thus:

"Whenever, therefore, a question concerning the constitutionality of a particular power arises, the first question is whether the power be expressed in the Constitution? If it be, the question is decided. If it be not expressed, the next inquiry would be whether it be properly incident to an express power and necessary to its execution, etc." (Story on the Constitution, sec. 1243).

The Court then, proceeding on this canon of construction, quote and discuss all the various provisions of the Constitution on which this legislation (sec. 5510) and the indictment founded on it could possibly have been based, namely, the thirteenth, fourteenth, and fifteenth amendments, and section 2, article IV, which we have before noticed as guaranteeing to the citizens of the several States

the privileges of citizens in each State, and find that none of them is a warrant for this legislation. Referring to the first section of the fourteenth amendment (hereinbefore noted as containing the prohibitions to the States), and to the fifth (giving power to Congress to enforce them), the learned judge quotes from the Slaughterhouse cases, as follows:

"If the States do not conform their laws to its requirements (of fourteenth amendment), then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation."

And he quotes and adopts the following expressive language of Mr. Justice Bradley in the Cruikshank case when it was tried in the circuit court (1 Woods, 308):

"It [the fourteenth amendment] is a guaranty against the acts of the State government itself. It is a guaranty against the exercise of arbitrary and unconstitutional power on the part of the government and legislation of the State, not a guaranty against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require or authorize Congress to perform the duty that the guaranty itself supposes it to be the duty of the State to perform."

And quoting from the same case when, in the Supreme Court, he again announced the doctrine that "the obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, and no more. The power of the National Government is limited to the guaranty." And he also repeated what was said in *Virginia* v. *Rives*—"that these provisions of the fourteenth amendment had reference to State action exclusively."

And having shown that the fourteenth amendment did not warrant the legislation, the court continues, in the following unanswerable argument, to show that these amendments and the rights secured by them cannot be violated by private persons, and hence congressional action under these amendments cannot be directed against nor operate upon private persons:

"A private person cannot make constitutions or laws, nor can he with authority construe them, nor can he administer or execute them. The only way, therefore, one private person can deprive another of the equal protection of the laws is by the commission of some offense against the laws which protect the rights of persons, as by theft, burglary, arson, libel, assault, or murder. If, therefore, we hold that section 5519 (before quoted) is warranted by the thirteenth amendment, we should, by virtue of that amendment, accord to Congress the power to punish every crime by which the right of any person to life, liberty, property, or reputation is invaded. Thus, under a provision of the Constitution which simply abolished slavery and involuntary servitude we should, with few exceptions, invest Congress with power over the whole catalog of crimes. A construction of the thirteenth amendment which leads to such a result is therefore unsound."

THESE DECISIONS SETTLED THE MEANING OF THE CONSTITUTION

This last decision would seem to close the door against all controversy as to the meaning of the three amendments and the powers of Congress under them. It, in connection with the preceding decisions of the Supreme Court, did settle, if anything can be settled in American constitutional law, that the power and consequent duty of protecting life, liberty, and property, all personal and property rights, the power to punish all invasions of them, all offenses against persons and property, remained exclusively with the States; that so far as power was conferred by the Constitution on the United States to interpose in these matters it was solely a power to prevent or correct State action of the kind prohibited, namely, State action depriving a person of life, liberty, or property without due process of law; that is, without due process of State law, not of Federal law, but of State law; and denying to any person the equal protection of the laws, of the State laws, for there were no other laws which could protect them; and that so far as Congress had the right under the clauses conferring jurisdiction to enforce the amendments, to pass laws to operate directly or indirectly, it was a power to restrain and correct State action, performed by State officers and agents clothed with State authority, and to punish such officers and agents for their official and public action done in the name and by the authority of the State, and did not reach the acts and conduct of private individuals.

THE CIVIL RIGHTS LAW AND ITS PROMOTERS

But the spirit of aggression on State authority, where that aggression would operate efficiently and offensively on the Southern States, the temper to intermeddle with the concerns of others, and to badger and insult them in that which related not only to their public conduct but also in their private and social relations, would not acquiesce in the defeat thus received at the hands of that august tribunal. In the year 1875 a law was enacted to enforce in public places, theaters, inns, and railroad cars, and on steamboats, a social equality between the two races.

The law was not obeyed anywhere. The colored people of the South in the main did not approve it; they were not inclined to force an association for which neither race felt any desire; they were content to leave to time, to the regular working of social forces, the regulation of social intercourse and social duties. Yet here and there all over the country were found those of that race—few indeed—mostly of mixed blood, who took advantage of the provisions of the statute. From this it resulted that, in some instances, criminal prosecutions were commenced under the statute, and civil suits for damages instituted for a violation of its provisions.

THE CIVIL RIGHTS CASES

Both classes of these came before the Supreme Court in December 1883, and are reported under the name of "Civil Rights Cases" (in 109 U. S. R., p. 3). The statute under which these cases arose was passed March 1, 1875 (sec. 18 Stat., p. 335), and is as follows:

"SECTION 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations and advantages, facilities and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement, subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude."

Section 2 provided penalties and punishments for any person violating the first section.

The statute was adjudged unconstitutional; this result was reached by an opinion drawn up by Mr. Justice Bradley, distinguished for the clearest analysis, the most unanswerable reasoning.

Time will not allow us to set out the substance of the argument of this great judgment; we can only quote from it a few short extracts, which are most directly pertinent to the question before us. The Court quoted from and confirmed the cases which had been decided, holding that the fourteenth amendment applied to State action alone; explained the fourteenth and fifteenth amendments, and in reference to the jurisdiction of Congress to exercise direct and positive power, in contradistinction to power merely corrective of prohibited State action, among other things said:

"It is State action of a peculiar character that is prohibited; individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind which impairs the privileges and immunities of citizens of the United States, or which deprives them of life, liberty, or property without due process of law, or which denies to them the equal protection of the laws."

And speaking of the fifth section, which gives Congress the power to enforce this, the Court continues:

"To enforce what? To adopt appropriate legislation for correcting the effect of such prohibited State laws and State action, and thus to render them effectually void and inoperative; this is the legislative power conferred on Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation, but to provide against State legislation and State action of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of State laws and the action of State officers, executive and judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment, but they are secured by way of prohibition against State laws and State proceedings opposing these rights and privileges, and by power given to Congress to legislate for carrying such prohibition into effect, and such legislation by Congress must necessarily be predicated upon such supposed State laws and State proceedings and be directed to the correction of their operation and effect."

This is clear enough, but the court emphasized the decision again in this extract:

"Until some State law has been passed, or some State action, through its officers or agents, been taken adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment, nor any proceeding under said amendment, can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority."

And again the court, in denying the power of Congress under these amendments to legislate on the subject of the violation by private persons of rights secured by them, use this language:

"Civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings; the wrongful acts of an individual unsupported by any State authority is simply a personal wrong, or a crime of that individual, an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by a resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy or sell, to sue in the courts, to be a witness or a juror; he may by force or fraud interfere with the right in a particular case; he may commit an assault against the person or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment, and amenable therefor to the laws of the State where the wrongful acts are committed.

"When the Constitution seeks to protect rights against the discriminative and unjust laws of a State by prohibiting such laws, it is not individual offenses but abrogation and denial of rights

which it denounces and for which it clothes Congress with power to provide a remedy. The abrogation or denial of rights for which the States alone were, or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied; and the remedy to be provided must be predicated upon that wrong. It must assume that in the cases provided for, the evil of the wrong actually committed rests upon State law or State authority for its exercise or perpetration."

COMMENTS ON THESE CASES

This closes what we have to say on the subject of judicial exposition by the Supreme Court of the powers of Congress, so far as they relate to the subject-matter of this bill. These cases prove beyond controversy that Congress has no direct power or jurisdiction over the main points in the bill. Congress can pass no law upon the subjects of personal conflicts between private individuals of different races and personal wrongs perpetrated by one on the other; or between persons of different political parties; or wrongs done by one party man on another because of opinions which the injured party may entertain or express. We suppose this much is conceded by the authors of the bill, or else they would have provided directly for the redress of the wrongs and the punishment of the offenders.

The authors of this bill have not been backward in asserting power in Congress over subjects cognate to those mentioned in this bill. Independent of any support which they may have given to the many acts of Congress which may have been decided unconstitutional by the Supreme Court in the cases we have referred to (and about which we have made no inquiry and therefore make no assertion), they have introduced bills in this body, contemporaneously with the decisions in the Civil Rights cases, which contained assertions of the extremest power over these subjects. One of these, introduced by the learned chairman of the Judiciary Committee (the Senator from Vermont) on the 4th of December, 1883, and reported back from the committee by the Senator from Massachusetts [Mr. Hoar] on July 20, 1884, indicates no want of faith in the unlimited power of Congress to legislate wherever colored people are concerned; yet this bill was never called up for action, and now sleeps the sleep of death. Whether it was abandoned from a change in the views of its authors as to its constitutionality or not, we are unable to say.

Certainly it was a very extraordinary bill in all its provisions. Its main object was to withdraw from the consideration of the State courts all cases in which was litigated any right for the settlement of which it was necessary to pass upon the race or color or previous condition of servitude of any person whatever. It further contained the degrading provision that authorized a citizen of the State in which the court sat to stop a trial in which he was a party and of his own mere will to remove it to a Federal court if he should be dissatisfied with a decision of any point made against him. A power so degrading to a court was never allowed in a free country to a mere suitor. Long years ago in England the writ of prohibition issuing from a superior court to an inferior was sometimes delivered to the inferior court during the trial, though it was always issued before; and by this proceeding a trial already commenced was stopped and removed to another court. But this was condemned by the English Parliament in the reign of Elizabeth, 300 years ago, and driven in disgrace from practice, and has so remained ever since.

It was left to the bill to which we have already referred to make the attempt for the first time to introduce the practice here, with the superadded wrong of leaving it to the discretion of a party in court to menace and insult the judge by an immediate removal of the case if he should dare to decide a question against him.

BILL UNCONSTITUTIONAL FOR A MERE INQUEST

It is no defense to the constitutionality of this bill that it assumes no jurisdiction, no power over persons to punish or restrain them; but simply directs the court to make an inquest or inquisition concerning crimes committed in a State and whose trial and punishment are solely in that jurisdiction. The question for our decision is, Have we the power to pass the bill? not whether the bill proposes nothing of effective force; not whether it be a mere impotent abortion, neither securing rights nor preventing wrongs.

It is no excuse in a constitutional point of view, even if it be true, that the bill does not invade effectively the domain of the reserved rights of the States, or is wholly innocuous from mere impotency and want of vigor. We must look to the Constitution for the power. It is certain the power to pass this bill is not among the express powers of the Constitution. No one pretends that. If it be claimed as an incidental power, then its advocates must point out the express power or powers for carrying out which this bill is necessary and proper or appropriate. This cannot be done. We challenge them to do this. Besides, mere impotency—mere inutility—condemns it as an incidental power, for only implied powers are granted by the Constitution, which are useful and effective, or, in constitutional language, "necessary and proper for carrying into execution" the powers expressly granted. So if it be ineffective and useless, for that reason alone it is unconstitutional. But conceding it to have force, as it has, the inquisition proposed in it, so far as it relates to injuries by private individuals, to persons and property (and that is the whole of it), is an inquisition into the conduct of persons, into crimes and offenses exclusively within the jurisdiction of the State. Whatever may be the information obtained by it, however calumnious and unjust to private citizens, to whom it gives no opportunity of defense, it cannot be made the basis of Federal action in the matters which constitute its soul and spirit.

POWER TO INQUIRE LIMITED BY THE JURISDICTION OVER THE SUBJECT

It was settled at an early day by the action of no less an authority than that of George Washington, that the jurisdiction of the legislative branch of the Government to make official inquiry, under the sanction and force of law, was limited by its power to act on the subject matter concerning which the inquiry was made. The Senate will remember that on March 12 last the Senator from West Virginia, in the debate on the relations between the President and this body, produced a message from George Washington, in which he declined to furnish certain information at the request of the House of Representatives upon the express ground that the House had no power over the subject to which the information related. In that message General Washington stated the grounds of his refusal in these words: "As, therefore, it is perfectly clear to my [his] understanding that the assent of the House of Representatives is not necessary to the validity of a treaty, and as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for throw no light, and as it is essential to the administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved," and is it not equally as important that the boundaries fixed by the Constitution between the Federal and State governments should be preserved? But we proceed with the quotation, "a just regard to the Constitution and to the duties of my office, under all the circumstances of this case, forbid a compliance with your request." What the Constitution forbids to be answered it equally forbids to be asked; what it forbids to be asked it forbids shall be obtained by force and through irresponsible power.

THE BILL IS NOT IMPOTENT AND HARMLESS

But the bill is not even entitled to the defense of being entirely impotent and harmless. Impotent it is for all the purposes of good and orderly government, but it has extraordinary vigor for evil. It establishes an unwarranted Federal espionage over matters confided exclusively to the jurisdiction of the States; it invites and encourages irresponsible and discontented persons to subject the conduct of their neighbors, their fellow citizens, to an investigation and scrutiny by a tribunal before which these persons thus slandered, thus maliciously accused, have no opportunity of appearing, either by themselves or counsel, or of summoning witnesses, or cross-examining those who speak against them. It is true the tribunal has no power to render judgment against them which will affect their lives, their liberty, or their property; but it has the power in an ex parte, inquisitorial way of giving official form and body and substance to accusations which there has been no opportunity to meet, to destroy character, and to blacken the names of citizens who are not heard in their own defense; to stamp as genuine and true slanders and libels; to give currency to blackguardism and perjury. It is true it accomplishes nothing in the way of enactments against personal rights, but, like a thief, it stealthily surveys the ground of future operations with the view of taking advantage of a more favorable opportunity for outrage and wrong.

Considering the tendency of this bill, its usurpation of a jurisdiction over private and personal rights, reserved to the States for their security and protection; considering also its capacity as a vehicle of calumny and slander, and its tendency to destroy the respect and confidence of the people in constitutional guaranties and official justice, it may be well to denounce it as no common or insignificant violation of the Constitution.

It destroys the whole scheme of the Constitution; it does not enter the vestibule merely and deface or destroy some slight ornament, but it saps and undermines the foundations of the temple itself.

THE BILL UNCONSTITUTIONAL IN ITS MEANS AS WELL AS IN ITS ENDS

But the bill is still further objectionable in that it seeks to attain unconstitutional ends by unconstitutional means. It was probably fit that this work of espionage, this inquisition into the conduct of persons over whom we have no jurisdiction, this usurped function to try citizens in their absence, to condemn without hearing, to circulate and give support to slander and calumny, should be prosecuted by a perversion to the work of injustice and wrong of the powers of that department which was more especially dedicated by the Constitution to the administration of right and justice. It would be a terrible but just retribution for our infidelity to the Constitution, that if that great charter, for mere party advantage, is to be destroyed, the rights of the States subverted, the rights of citizens to be trodden down, that the instrument selected for these wicked ends should be that especial organism in our system to whose virtue and intelligence were committed the protection and preservation of all these which this bill appoints it to destroy.

THE POWER CONFERRED ON THE COURTS IS NOT JUDICIAL

The power committed by this bill to the circuit courts is not a judicial power of the United States, and none but judicial power can be vested in a court of the United States.

The Constitution declares that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The Constitution in another place authorizes Congress to confer the power of appointing certain inferior officers on the courts

of the United States. Beyond this there is no power to confer on any court of the United States any power but judicial power, nor any judicial power but judicial power of the United States. That power is defined in the Constitution itself, and, so far as it can have any possible relation to this bill, is embraced in the following words:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

It must be noted that the language used is "cases," not "questions," arising under the Constitution and laws of the United States. The distinction between "questions" and "cases" is important and well settled. The jurisdiction is in "cases." A case arises only when some question respecting the Constitution and laws "shall assume such form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law," said Chief Justice Marshall in *Osborn* v. *United States Bank* (9 Wheat. p. 819).

The same great judge, in his argument in the Jonathan Robbins case in the House of Representatives in March 1880, made this matter still more plain. Referring to certain resolutions then before the House, in which it was declared that the judicial power extended to all "questions" arising under the Constitution and laws and treaties, he called attention to the fact that the Constitution used the word "cases," not "questions," and he then said:

"The difference between the Constitution and the resolutions was material and apparent. A 'case in law or equity' was a term well understood and of limited signification; it was a controversy between parties which had taken a shape for judicial decision. * * * By extending this judicial power to all cases in law and equity the Constitution had never been understood to confer on that department any political power whatever. To come under this exception a question must assume a form for forensic litigation and judicial decision. There must be parties to come into court who can be reached by its process and bound by its powers; whose rights admit of ultimate decision by a tribunal to which they are bound to submit." (See Annals of Sixth Congress, p. 606.)

It is clear that this bill is unconstitutional, for not only is there no "case" in which a court can act, but there is not even a "question" arising under the Constitution, or any law or treaty of the United States. The questions are such only as a party majority may ask, and they concern only the conduct of parties which may be supposed to violate some laws of a State, over which the Federal Government has no jurisdiction whatever. Not only does the jurisdiction fail, because there is no case before the court of any kind arising out of a Federal or State law, but because the power conferred by the bill on the circuit courts is not of itself judicial in any sense whatever. Keeping in mind what has already been quoted from Chief Justice Marshall, let us consider some authorities which treat of judicial power, in its essence and nature, whenever and wherever it is exerted.

In *Shultz* v. *McPheters* (79 Ind. R., p. 378) the supreme court of that State say:

"It is the inherent authority not only to decide but to make binding orders and judgments, which constitutes judicial power."

And the Supreme Court of Michigan in *Underwood* v. *McDuffie* (15 Mich. R. 368), said:

"The judicial power, even when used in the widest and least accurate sense, involves the power to hear and determine the matters to be disposed of; and this can only be done by some order or judgment which needs no additional sanction to entitle it to be enforced."

And the court proceeds to condemn in totidem verbis the things which this bill authorizes and requires to be done. Say the court:

"No action, which is merely preparatory to an order or judgment to be rendered by some other body, can be properly termed judicial."

A learned commentator on the Constitution, discussing this subject, says:

"In order to make a case for judicial action, there must be parties to come into court, who can be reached by its process and bound by its powers—parties whose rights admit of ultimate decision by a tribunal to which they are bound to submit; and also that the question to be acted on should be capable of final determination in the judicial department of the Government, without revision or control of either the Executive or Legislature." (Curtis' Com., p. 96.)

And another learned commentator says:

"The kind of authority that is judicial in its nature relates to and acts on rights of person and property not created by this authority, but under existing law. This authority, 'in specific controversies' between parties, determines these rights as they exist, and does so at the instance of a party. These qualities distinguish judicial power from what is simply executive or legislative." (Spear on Const., p. 3.)

Tested by these rules, there can be no doubt that the power attempted to be conferred by this bill on the circuit courts is not of the kind which they are authorized to receive, namely, judicial power. This bill provides only for the summoning of witnesses at the instance of persons claiming no rights and seeking redress for no wrongs, and then for examining them concerning the circumstances of an alleged homicide or serious injury to person or property consummated or threatened.

There is no controversy before the court for its determination; there are no parties over whom it has power, or who, on the one hand, ask for a recovery of rights, or who, on the other, deny or contest rights demanded against them. The court hears nothing, deliberates on nothing, determinines nothing; it renders no judgment, it restores or redresses no right and remedies no wrong. The court only hears evidence concerning a matter over which it has no jurisdiction and reports to another department its conclusions as to facts about which the court itself has no right to form a judgment. The sole power of the court is to report to the President its opinion as to the existence of certain facts which it is alleged are criminal by the laws of the State in which they transpired. The sole function of the court is to act as a detective for the Executive, to enter into a sovereign State to inquire into the conduct of its citizens, and to gather from common informers, in some instances, their impressions or beliefs, but in others their calumnies and slanders. These witnesses are not to be confronted by the persons whom they accuse, nor to be cross-examined to test either their accuracy or their sincerity.

That is all of it.

ONLY JUDICIAL POWER CAN BE CONFERRED ON COURTS OF UNITED STATES

It is not a new or doubtful question as to the power of Congress to confer on any of the constitutional courts of the United States—the Supreme Court, the circuit court, or the district court—any authority or function not judicial. The question arose early during the administration of General Washington, under an act of Congress authorizing the circuit courts to inquire into the justice of certain claims for pensions. All the Supreme judges acting on the circuit (except Mr. Justice Johnson, and as to him there is no information) held the act unconstitutional upon the ground that the power was not judicial, inasmuch as the adjudication was not to be final, but was to be reported to the Secretary of the Treasury. Some of the judges, however, concluded they would—acting as commissioners and not as judges in court—perform the duty assigned to them under the act. Congress and the President being informed of the opinion of the judges, the act was repealed, saving in the repeal, however, all rights to pensions founded on "any legal adjudication."

A case, during the next year, came up in the Supreme Court, in which the validity of an adjudication made by the judges, as commissioners, was the only point involved, and that Court unanimously held that the act conferring the power on the circuit courts was unconstitutional, and that, as the power was conferred on the courts, it could not be exercised by the judges as commissioners. (See *Hayburn's Case*, 2 Dall.)

In the bill before us, it must be noticed that the power is conferred on the circuit court, not on the circuit judge. This was done ex industria by the Judiciary Committee, for the bill as originally introduced conferred the power on the judge, and by the Judiciary Committee it was amended as it now appears. The change was made for the purpose, as it was stated, of having a court rather than a mere judge, so that the laws empowering courts to use compulsory process for the attendance of witnesses and punishing them for contumacy might apply.

But if the bill should be amended so as to stand as it originally was, to give this power to the judge acting as a commissioner merely, it would still be liable to the objection of being unconstitutional, notwithstanding the judge might himself waive his objections and consent to act. In that case the bill would mean that every judge of a circuit court in the United States should be thereby appointed a commissioner to discharge the duties mentioned in the act. This would be an appointment to office by Congress, and not, as the Constitution requires, by the President by and with the advice and consent of the Senate. This view received the express sanction of the Supreme Court in *United States* v. *Ferreira* (13 How. 40).

In that case Chief Justice Taney, in a very able and learned opinion, reviewed this whole subject. A law of Congress had committed to the district judge for the district of Florida the power and duty of examining certain claims against the United States for losses sustained by certain Spanish citizens. This law was passed in pursuance of a treaty with Spain. That judge, after examining the witnesses for and against each claim, was required to make his decision and report it to the Secretary of the Treasury, who, on being satisfied that the claim was right and just, was to pay it. On an appeal from a decision so made by the judge, the Supreme Court of the United States held that the power granted was not judicial, it being not final, the award of the judge being subject to revision by the Secretary of the Treasury. The Court, speaking of the powers conferred by the act on the district judge and the Secretary of the Treasury, said:

"They are, it is true, judicial in their nature. For judgment and discretion must be exercised by both of them, but it is nothing more than the power ordinarily given by law to a commissioner appointed to examine claims to land or money under a treaty, or special powers to inquire into or decide any other particular class of controversies in which the public or individuals may be concerned. A power of this description may constitutionally be conferred on a secretary as well as on a commissioner. But it is not judicial in either case in the sense in which judicial power is granted by the Constitution to the courts of the United States."

And having reached the conclusion that the court as a court had no constitutional power under the act, the Supreme Court proceeded to consider the question, whether the power could be exercised by the judge, as a commissioner, without additional

appointment to that particular office by the President, by and with the advice and consent of the Senate, and on this point the Court said:

"The duties to be performed are entirely alien to the legitimate functions of a judge or court of justice and have no analogy to the general or special powers ordinarily and legally conferred on judges or courts to secure the due administration of the laws. And [continues the Supreme Court] if they [the district judges acting as commissioners] are to be regarded as officers, holding offices under the Government, the power of appointment is in the President, by and with the advice and consent of the Senate, and Congress could not by law designate the persons to fill these offices."

This case is absolutely conclusive and settles beyond controversy that the bill is wholly unconstitutional when considered in its aspect of the machinery selected for making this inquest. In Ferreira's case the powers conferred were considered as in their nature judicial, but yet not judicial in the sense of the Constitution. They were powers to determine, to adjust; but because the judgment was not final, but depended for its force on the action of another department, though there were parties before the judge, and there was a real case, a real controversy between them, and in the proper shape for forensic and judicial action, yet for the reason stated—the want of finality—the power was held not judicial and incapable of being conferred on a court. The powers here in this bill are not even in their nature judicial; it is a mere power to inquire, without the power to make a decision or render any judgment, final or otherwise; a power simply to inquire and report to another department.

The principles of this case are fully settled in our jurisprudence, and have been since the year 1792, when Hayburn's case was decided. There is no break in the continuity of the opinions of the Supreme Court sustaining this view. It received the sanction of the Supreme Court in *Gordon* v. *United States* (2 Wall.). No opinion was delivered in that case, but one was drawn up by Chief Justice Taney before his death and is published as an appendix to volume 117, United States Reports. We call the attention of the Senate to it as the last great work of that great man. It will add to his fame by the soundness and force of its reasoning and by its unanswerable exposition of the true position of the United States courts in our system.

With this we submit the constitutional questions involved in this bill to the judgment of the Senate, in the confidence that it has been shown, both on reason and authority, that the bill, if enacted, would be a serious infraction of the Constitution, and mischievous and unjust in its enforcement.

J. L. PUGH.
RICH'D COKE.
GEO. G. VEST.
J. Z. GEORGE.

A bill to provide for inquests under national authority

Be it enacted, etc., That whenever any three citizens of the United States shall, under oath, present to any judge of a circuit court, either in term time or vacation, their petition setting forth that within the circuit for which such judge has jurisdiction, and within the State of which the petitioners are residents, any person has been killed, or has sustained serious bodily injury, or serious injury in his estate, or been threatened with injury in person or estate, because of the race or color of such person so killed, injured, or threatened, or because of any political opinion which such person so killed, injured, or threatened may have held in regard to matters affecting the general welfare of the United States, or with design to prevent such person so killed, injured, or threatened, or others, from expressing freely such opinion, or from voting as he or they may see fit at any election of officers whose election is required or provided for by the Constitution or laws of the United States, or to influence or affect the votes of such persons or others at such elections, it shall be the duty of such judge, as soon as may be, to open a special session of such circuit court at such place within said circuit as he may appoint, and the duty of such court to hold an inquest into the circumstances of such killing, injury, or threatening, and to cause to be summoned and examined all such witnesses as the court may think proper.

SEC. 2. That said judge shall forthwith report the evidence by him taken, and his conclusions of fact thereon, to the President of the United States, to be by him laid before Congress.

SEC. 3. That the judge may require any district attorney of the United States within his circuit to attend such inquest and to aid in preparing for and conducting the same, or he may, in his discretion, appoint any other counselor at law to prepare and conduct such inquest.

SEC. 4. That the expenses of such inquest shall be certified by the judge to the Department of Justice and paid out of the appropriation made for the expenses of the courts of the United States.

Mrs. CARAWAY. Mr. President, I wish to thank the Senate for granting unanimous consent that the clerk read the document which has just been read. If it had not been read at the desk, I myself should have read it, and it would have taken very much longer. The arguments presented are so pertinent to the bill under consideration that I thought it would be well to have the entire report in the RECORD. I hope those Senators who were not present during the reading will read the report as throwing light on the bill we have before us for discussion.

I wish to say further that I should like to reiterate the statement I made in closing my remarks when I asked that the document be read. If this bill shall pass I feel there will be a far greater crime committed against our Government and especially against the South than the crime for which the measure is claimed to be a cure.

Mr. McKELLAR. Mr. President, a day or two ago an editorial published in the Washington Post was read into the RECORD, and perhaps other editorials were read. In today's issue of the Washington Evening Star there appears an article by Mr. Mark Sullivan. Ordinarily, I would merely ask that the article be printed in the RECORD, but, because of Mr. Sullivan's long service as a newspaper correspondent and writer, because of his great ability, and because of his learning and thoughtfulness as an author—and he has written a number of books, and most readable books they are, most instructive books they are; I do not know of any books written on recent politics that are more interesting or more instructive—because of these considerations, I want to read Mr. Sullivan's article, and I desire to call the attention of every Senator to the reasoning of Mr. Sullivan, which should appeal to every right-thinking and fair-minded man on either side of the Chamber.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. CONNALLY. I regret that the majority leader, the Senator from Kentucky [Mr. BARKLEY], and the Senator from New York [Mr. WAGNER], who are pushing this bill, are not present to hear the wise remarks made by Mr. Sullivan.

Mr. LEWIS. Mr. President, I must again announce to my able friend that the Senator from New York [Mr. WAGNER] is confined to his room on the orders of his physician. I do not know the reason for the absence of our leader.

Mr. McKELLAR. I am glad to see present some Senators who are still of the opinion that the bill ought to be passed, and perhaps it will do them some good to listen to the reading.

This article, appearing in this afternoon's Star, has a headline as follows:

Why pass lynch bill?

And then there is a subhead, which reads:

Way might be opened for those who desire authoritarian government.

By Mark Sullivan——

Mr. LEWIS. Mr. President, with the consent of the Senator from Tennessee, let me suggest to my eminent friend from Texas that the leader of the majority, the Senator from Kentucky [Mr. BARKLEY], has taken his seat and is now present in the Chamber.

Mr. McKELLAR. I am glad to hear that announcement.

Mr. BARKLEY. Mr. President, I inquire is it true that reference has been made to the fact that I was temporarily called from the Chamber?

Mr. LEWIS. It was pleasantly thought that the eminence of my able friend from Kentucky had so increased the attention which should be given to him that his very absence was a definite infliction on the Senate, and the able Senator from Texas made allusion to it, I dare say, as a substantial loss to himself.

Mr. BARKLEY. I appreciate that. It makes me very happy to know that my presence is missed so greatly by my friend from Texas that he must call attention to my absence. I did not know that my presence was so important, but it fills me with pride to know that the Senator from Texas feels that way about it.

Mr. CONNALLY. I was only expressing regret that the Senator from Kentucky was not here to listen to the contribution made by the Senator from Tennessee. Knowing they are deskmates, I am sure the Senator from Kentucky will want to hear anything the Senator from Tennessee says.

Mr. McKELLAR. If I may be permitted to make a suggestion, I do not mind whether the Senator from Kentucky

or any other Senator listens to what I have to say, but I want to ask every Senator, including the Senator from Kentucky, of course, to listen to this article by Mr. Mark Sullivan, who I cannot believe has any other interest in this matter except what he believes is the good of the American people and of the Government.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McKELLAR. Yes.

Mr. BARKLEY. There is no Member of the Senate to whom I listen with greater pleasure, and usually greater profit, than the Senator from Tennessee. The Senator realizes, of course, that any of us are likely to be called temporarily from the Chamber at any time during the session, and if we are to enter upon a contest of bookkeeping with respect to one another as to which one shall be called out the most frequently and remain out the longest while this bill is under consideration, then it might be well for the Senate to employ an expert accountant so that he might take note of the absence of all Members when they are called out for any purpose whatever.

Mr. McKELLAR. I hope the Senator understands that I made no suggestion about his absence.

Mr. BARKLEY. I understand the Senator did not and would not.

Mr. McKELLAR. I sit next to my distinguished friend and have the highest admiration and esteem for him.

However, I wish to read this article, and I do not want anything to interfere with the Senate hearing what Mr. Sullivan has to say. I shall now go ahead, as suggested by the Senator from Oregon [Mr. McNARY]. The article reads:

The Senators opposing the so-called antilynching bill are so far a minority. Yet they have the psychological advantage. They have the psychological advantage because by their attitude they ask a question. It is a question that can hardly be answered convincingly. The question is, Why pass this bill?

Why pass this bill?—

Because nobody answers that question convincingly, the Senators opposing are justified in keeping the question before the Senate long enough for public attention to be centered on it. What conditions are there that justify the passage of this bill? The crime with which this bill purports to deal has become today the rarest crime in the United States. In 1937 only eight lynchings occurred, in 1936 only nine. And the number of cases to which this bill would apply is smaller yet. For the measure deals only with those cases in which local, State, or county officials failed to use—I quote the bill—"all due diligence" in preventing a lynching or apprehending the lynchers.

How many such cases there were last year or the year before I do not know. It would be useful to have an inquiry by impartial, judicial-minded persons to determine in just how many cases did local officials fail to practice due diligence. If the inquiry were completely unbiased, the number arrived at, we can safely surmise, would be extremely small. It is the clearest of facts that the public officials and the public opinion of the South are determined to end lynching. They have been successful in reducing it to a point where the crime has almost passed as far into history as the vigilante movements that were once frequent in the West.

FIVE-YEAR TERM POSSIBLE

The progress the South has made through its own public officials and public opinion is now rewarded by seeing a bill introduced in Congress which would have Federal officials pass judgment on southern State and county officials, and, where the Federal officials see fit, hale the local officials into court charged with a felony, punishable by a jail term as high as 5 years.

Lynching in the South is far less frequent than gang murders in northern cities. Prevention and punishment of lynching by the law officials of the South is more effective than prevention and punishment of gang murders by corresponding officials in the North.

To deal with this rarest of crimes a bill is introduced in Congress. It is not an ordinary bill which would make lynching, or failure to prevent or pupish lynching, a Federal crime as well as a State one. That double jurisdiction existed when we had national prohibition, and it had unfortunate results, as everybody knows. But this bill now before Congress goes much further. It would have the Federal courts supplant the State courts. Federal officials would proceed through the Federal courts to try, and if successful, jail State officials—

"Jail State officials!"—

for whatever some Federal official might deem to be lack of "all due diligence." "All due diligence" is an elastic and therefore dangerous phrase.

GOVERNMENT FORM THREATENED

To deal with this rarest of crimes, a bill is introduced in Congress which, in the belief of Senator BORAH and other competent judges, would "destroy the last vestige of State rights," and by doing that would change our form of government. To deal with this rarest of crimes, more than a week of the time of the Senate is consumed and a program of important public legislation is held up. It is said that it is the opponents of the measure who are causing delay. If they are consciously practicing delay, they are justified by the importance of the issue. But is it the opponents of the bill who are causing the delay? Is not the delay rather to be charged to those who insist on keeping the measure before the Senate? It is these who should answer why. Why must this bill be kept before the Senate? Why must it be passed now? The number who really press the bill is not large.

I digress here long enough to say that not a Senator has spoken for the bill, though it has been before the Senate not merely a week but nearly a month.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER (Mr. RUSSELL in the chair). Does the Senator from Tennessee yield to the Senator from Georgia?

Mr. McKELLAR. I do.

Mr. GEORGE. Would it interfere with the distinguished Senator from Tennessee for me to make an inquiry at that point?

Mr. McKELLAR. Not at all.

Mr. GEORGE. The Senator has said no Senator has spoken for the bill. Has anyone submitted any authority here, either by way of brief or otherwise, tending to support the validity or constitutionality of the bill?

Mr. McKELLAR. No, Mr. President; no brief has been submitted, no authority has been submitted, and when a brief has been asked for, when an argument has been requested by those of us who oppose the bill, its proponents say, "We will reach it in due time."

Mr. GEORGE. The Senator from Tennessee must know, of course, as all Senators know, that the validity of this bill has been under question uniformly for a great number of years. The best legal minds in this country at least, and I dare say practically all the legal minds of first rank, have either doubted the validity of the bill or openly condemned it as being without authority so far as the Federal Government is concerned. Yet does it not strike the Senator that it is a most unusual proceeding that since the 6th day of this month, when this bill was formally taken up by the Senate, no Senator has spoken in behalf of it, and no Senator has submitted a brief or memorandum or list of authorities or suggested an argument on which the validity of the bill could be sustained?

Mr. McKELLAR. All that the Senator states is absolutely true.

Mr. Sullivan says:

Many who will vote for the bill when the roll call comes would in their hearts prefer that the bill be dropped.

The objections to the measure go to the heart of two matters which now are of the highest importance. First, the bill, if passed and sustained by the Supreme Court, would open a gate through which the Federal Government could take over—I quote a competent constitutional student—practically any function of the State it chooses. The bill would thus make the way broad and clear for those who wish to bring about in America a centralized authoritarian government.

RULE BY PRESSURE GROUPS

Second, passage of the bill would give enormous momentum to what is recognized as one of the most serious of our political evils. Passage of the bill would be another example of government by small "pressure groups." The number of voters to whom this bill is supposed to appeal is probably less than a million—the Negro voters in northern cities. Senator BYRNES, of South Carolina, made a statement which no advocate of the measure challenged: "One Negro * * * Walter White, secretary of the Association for the Advancement of the Colored People, has ordered this bill to pass * * *. If Walter White, who from day to day sits in the gallery, should consent to have this bill laid aside its advocates would desert it as quickly as football players unscramble when the whistle of the referee is heard. * * * For years * * * White has worked for this bill. Now that he has secured the balance of the voting power in so many States, he can order its passage."

It is not a happy condition when such a statement as that can be made—whether the man in the gallery be of one race or another, whether the number of voters he represents be a million or two million or any other small fraction of the total electorate. For the next step, and the likely step, would be that a man in the gallery might demand and get a measure that would take us further toward that authoritarian type of government recently

developed in Europe, which it is America's greatest present concern to avoid.

Mr. President, after reading that article, I wish to thank Mr. Sullivan for his splendid contribution to constitutional government, to actual government; his contribution in behalf of those State authorities who today are doing their duty to the best of their ability, who have entirely done away with white lynching, and only eight lynchings of colored persons took place last year. I wish to say that if those who advocate the bill will let the State authorities alone, and let them continue to decrease this crime, all of us who abhor and are opposed to the crime will have the satisfaction within 3 or 4 years, in my judgment, and perhaps in less time, of reading in the records that there has not been a single lynching in the United States during the year.

FEDERAL TRADE COMMISSION

Mr. WHEELER. Mr. President——

Mr. McKELLAR. I yield to the Senator from Montana.

Mr. WHEELER. I ask the Chair to lay before the Senate the amendment of the House of Representatives to Senate bill 1077.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1077) to amend the act creating the Federal Trade Commission, to define its powers and duties, and for other purposes, which was to strike out all after the enacting clause and to insert:

That section 5 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914 (U. S. C., 1934 ed., title 15, sec. 45), is hereby amended to read as follows:

"SEC. 5. (a) Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the acts to regulate commerce, and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in said act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

"(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, with the consent of the person, partnership, or corporation required by the order to cease and desist, modify, or set aside, in whole or in part, the report or order made or issued by it under this section.

"(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within 60 days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additfonal evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

"(d) The jurisdiction of the Circuit Court of Appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

"(e) Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

"(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

"(g) An order of the Commission to cease and desist shall become final—

"(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

"(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals, and no petition for certiorari has been duly filed; or

"(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals; or

"(4) Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

"(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

"(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of 30 days from the time such order of the Commission was rendered, unless within such 30

days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

"(j) If the Supreme Court orders a rehearing; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

"(k) As used in this section the term 'mandate', in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

"(l) Any person, partnership, or corporation who violates an order of the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

SEC. 2. Such act is further amended by adding at the end thereof new sections to read as follows:

"SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

"(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics; or

"(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

"(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5.

"SEC. 13. (a) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the Public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

"(b) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

"(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

"(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

"SEC. 14. (a) Any person, partnership, or corporation who violates any provision of section 12 shall, if the use of the commodity advertised may be injurious to health because of results from such use, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment: *Provided*, That this section shall not apply to products duly marked and labeled in accordance with rules and regulations issued under the Meat Inspection Act, approved March 4, 1907, as amended.

"(b) No publisher, radio broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

"SEC. 15. For the purposes of sections 12, 13, and 14—

"(a) The term 'false advertisement' means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates; but if, at the time of the dissemination of the advertisement, there exists a substantial difference of opinion, among experts qualified by scientific training and experience, as to the truth of a representation, the advertisement shall not be considered misleading on account of such representation, if it states clearly and prominently the fact of such difference of opinion. Nothing in this paragraph shall be construed as requiring the making of such statement as to difference of opinion; and failure to so state the fact of such difference of opinion shall not relieve the Government of the burden of establishing the misleading character of the representation. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

"(b) The term 'food' means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

"(c) The term 'drug' means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

"(d) The term 'device' (except when used in subsection (a) of this section) means instruments, apparatus, and contrivances, including their parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

"(e) The term 'cosmetic' means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

"SEC. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (l) of section 5, it shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection.

"SEC. 17. If any provision of this act, or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the remainder of the act and the application of such provision to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

"SEC. 18. This act may be cited as the 'Federal Trade Commission Act.'"

SEC. 3. (a) In case of an order by the Federal Trade Commission to cease and desist, served on or before the date of the enactment of this act, the 60-day period referred to in section 5 (c) of the Federal Trade Commission Act, as amended by this act, shall begin on the date of the enactment of this act.

(b) Section 14 of the Federal Trade Commission Act, added to such act by section 2 of this act, shall take effect on the expiration of 60 days after the date of the enactment of this act.

Mr. McKELLAR. Will this matter lead to any argument?

Mr. WHEELER. I do not know; but if it does I shall withdraw it.

Mr. McKELLAR. It will not take me more than a few minutes to finish. If the Senator will wait for a few minutes, I shall be through.

Mr. WHEELER. I ask unanimous consent at this time to move to concur in the amendment of the House of Representatives.

Mr. COPELAND. Mr. President, I must object to that.

Mr. McNARY. Mr. President, is this a House bill?

Mr. WHEELER. It is a Senate bill which was discussed here, and passed the Senate during the regular session, and went to the House. The House has made some minor

amendments. I have consulted the members of the Federal Trade Commission with reference to the amendments, and they all state that the amendments are satisfactory to them.

Mr. McNARY. That may be; but I am not at all familiar with the bill. What is the bill about?

Mr. WHEELER. It is a bill with reference to unfair practices in commerce. We discussed it on the floor of the Senate at the regular session.

Mr. McKELLAR. Am I to understand that the Senator from New York objects?

Mr. COPELAND. Yes, Mr. President.

Mr. BARKLEY. Mr. President, if the Senator will yield, this is a matter which can be disposed of very quickly at any time; and the Senator from Montana will have ample opportunity to do it either later in the day or tomorrow, rather than in the middle of the speech of the Senator from Tennessee.

Mr. WHEELER. I thought probably there would be no objection to the action of the House, and we could dispose of it.

Mr. BARKLEY. There will be none on my part.

The VICE PRESIDENT. The Chair does not know who has the floor.

Mr. McKELLAR. I have the floor, and yielded to the Senator from Montana.

The VICE PRESIDENT. The Chair is informed that the Senator from Tennessee has the floor, and that a privileged matter has been laid before the Senate.

Mr. McKELLAR. Yes, Mr. President.

The VICE PRESIDENT. The Chair is further informed that the Senator from Montana moves that the Senate concur in the amendment of the House of Representatives.

Mr. WHEELER. That is correct.

The VICE PRESIDENT. The question before the Senate is, Will the Senate concur in the amendment of the bill by the House of Representatives? That brings up the whole question. The Senator from Tennessee has yielded for that purpose.

Mr. McKELLAR. I have yielded for that purpose.

Mr. COPELAND. Mr. President, I suppose this matter can come up properly at this time.

The VICE PRESIDENT. The Chair is informed by the Parliamentarian that it is a privileged matter, being an amendment to a Senate bill by the House of Representatives.

Mr. BARKLEY. Mr. President, in that connection I desire to propound a parliamentary inquiry. While it is a privileged matter, is it not true that it does not enjoy such privileged status as to take the Senator from Tennessee from the floor unless he yields?

The VICE PRESIDENT. That is the point. The Senator from Tennessee has yielded, and the question now before the Senate is whether or not the Senate will agree to the motion of the Senator from Montana to concur in the amendment of the House.

Mr. CONNALLY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Texas will state it.

Mr. CONNALLY. Even though this be a privileged matter, if it is acted upon at this time will it not have the effect of displacing the pending bill?

The VICE PRESIDENT. It will not.

Mr. COPELAND. Mr. President, I appeal to the Senator from Montana to let this matter go over for a few days. He will recall that a few months ago we passed a food and drug bill with the inclusion of a provision about advertising, placing the advertising where personally I think it belongs, under the control of the Food and Drug Administration of the Department of Agriculture. The particular provision to which I have referred comes from the House as an amendment to a measure which passed this body some months ago, relating to the functions of the Federal Trade Commission.

I am not here to say that my final judgment personally is that I should always resist placing the advertising under the control of the Federal Trade Commission; but the action of the House brings about a very critical situation with regard to the legislation relating to food and drugs. As I understand the matter from conversation with the chairman of the House committee, the food and drug bill is likely to come up in the House next week; and, if I am any prophet as to what the House will do, it will either include in that bill a provision to place the advertising under the Federal Trade Commission, or it will omit the matter entirely, depending upon the hope that the bill now before us may be enacted.

I will say to the Senator from Montana that as a matter of parliamentary procedure it would be very embarrassing to me to have the Senate in effect repudiate what it did twice in the last Congress, and did again in this Congress. The matter is so important that it ought not to be disposed of in this offhand manner.

Mr. WHEELER. Let me say to the Senator that there is nothing new in this bill. The matter has been thrashed out on the floor of the Senate time and time again. This bill passed the Senate. It went over to the House, and has now passed the House with some slight amendments which the Federal Trade Commission inform me are satisfactory to them and are satisfactory, so far as I know, to everybody else. This bill does not conflict in any way, shape, or form with the Food and Drug Act which heretofore passed the Senate. Ordinarily I should not ask to take it up now; but I am compelled to leave town and be gone for several days, and consequently I should like to have the matter taken up and acted upon at this time.

The VICE PRESIDENT. The amendment of the House is before the Senate, and the Senator from New York has the floor.

If the Senator from New York, the Senator from Texas, and the Senator from Kentucky will permit the Chair to do so, the Chair desires to read the last section of rule VII, so that the Senate may have it in mind, because during the debate on the so-called antilynching bill it may come up again and again:

> The Presiding Officer may at any time lay, and it shall be in order at any time for a Senator to move to lay, before the Senate any bill or other matter sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate.

That is, the motion to lay the matter before the Senate. This matter has been laid before the Senate, and therefore it is subject to debate.

The Chair has read the rule for the benefit of the Senator from Texas and the Senator from Kentucky, because other matters like this may be brought up. A message from the President of the United States or a message from the House of Representatives may be laid before the Senate at any time.

Mr. COPELAND. Mr. President, I regret that the Senator from Montana has not read the CONGRESSIONAL RECORD this morning. The debate in the House clearly indicates that this amendment, which was made in the House, was adopted for the purpose of putting the control of advertising in the Federal Trade Commission. If I could convince the Senator from Montana of that fact I know that he would accede to my request that the matter go over, because he assured me on the floor of the Senate when the bill was before us originally that nothing in the bill had to do with the functions of the Food and Drug Administration.

Mr. WHEELER. I still assure the Senator of that fact; it has nothing to do with the Food and Drug Administration. There are two separate jurisdictions, and they would work concurrently.

Of course, if a bill of this kind were enacted it might be that to some slight extent there would be conflict in jurisdiction between the Federal Trade Commission and the Department of Agriculture. But there is a chance of conflict in the case of pretty nearly any piece of legislation. It is a matter to be worked out between the two jurisdictions as to which would enforce the particular provision. But if there were taken out of the bill what the Senator wants stricken

and the function were turned over to the Food and Drug Administration, it would leave the administration of the Federal Trade Commission in a sad way, so that they could not enforce the law against bad practices with reference to other industries which ought to be regulated.

Mr. COPELAND. The Senator from Montana is so uniformly right that I hesitate to call attention to the fact that he is wrong this time, just as wrong as a man can be, because the function of the Federal Trade Commission is to deal with unfair practices.

Mr. WHEELER. If the Senator will permit me to interrupt him, I will bring an end to the controversy. I have just talked with the leader on this side and he has suggested that I withdraw the motion for the present and take it up at a later time. I ask unanimous consent that I may withdraw the motion at this time.

The VICE PRESIDENT. The Senator from Montana asks unanimous consent to withdraw his motion for the concurrence of the Senate in the amendment of the House to Senate bill 1077.

Mr. COPELAND. Mr. President, I should like to have it understood that this matter will not be brought up in my absence and that I may be here when it is called up for consideration by the Senate.

Mr. WHEELER. Mr. President, I am not going to give any assurance. I will try to get in touch with the Senator and attempt to see that he is here. I am withdrawing the motion at the suggestion of the Senator from New York, and I do not want to do it on any condition as to when I may bring the matter up again.

Mr. COPELAND. So far as I am concerned, I am willing to have the Senate go on with it, and have it determined now.

Mr. WHEELER. The Senator asked to have it go over.

Mr. COPELAND. If the Senator will put it over for a week, I shall be satisfied.

Mr. WHEELER. I am asking that I be allowed to withdraw the motion, and I will take it up in about a week.

Mr. COPELAND. That is satisfactory. I have no objection.

The VICE PRESIDENT. Is there objection to the request of the Senator from Montana? The Chair hears none, and the motion is withdrawn.

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws and to punish the crime of lynching.

Mr. McKELLAR resumed the floor.

Mr. BARKLEY. Mr. President, will the Senator from Tennessee yield?

Mr. McKELLAR. I yield.

Mr. BARKLEY. I am compelled to go to the telephone in the cloakroom in order to call the Treasury on official business, and I should like to ask the schoolmaster from Texas if I may go out. [Laughter.]

Mr. CONNALLY. I should be very glad to have the Senator absent himself to go to the telephone, or to any other place he desires to visit or the promptings of his mind may suggest. [Laughter.]

Mr. BARKLEY. I merely wish to use the telephone.

Mr. McKELLAR. Mr. President, I did not even know the State from which Mr. Sullivan hailed, but upon inquiry I find that he was born at Avondale, Chester County, Pa., so the article to which I have been referring was written by a Pennsylvanian. I think it ought to be convincing to any fair-minded man, and I desire to call the attention of every Senator to it.

Mr. CONNALLY. Mr. President——

The VICE PRESIDENT. Does the Senator from Tennessee yield to the Senator from Texas?

Mr. McKELLAR. I yield.

Mr. CONNALLY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Andrews	Gibson	Lonergan	Sheppard
Bailey	Guffey	McCarran	Smathers
Barkley	Hale	McGill	Thomas, Utah
Berry	Harrison	McKellar	Townsend
Bulkley	Hayden	McNary	Vandenberg
Bulow	Hill	Miller	Van Nuys
Chavez	Hitchcock	Neely	Wheeler
Clark	Johnson, Calif.	Nye	
Connally	Lewis	Pittman	
Copeland	Logan	Russell	

The PRESIDING OFFICER (Mr. BULOW in the chair). Thirty-seven Senators having answered to their names, there is not a quorum present. The clerk will call the names of the absent Senators.

The legislative clerk called the names of the absent Senators, and Mr. ADAMS, Mr. ASHURST, Mr. BANKHEAD, Mr. BILBO, Mr. BONE, Mr. BORAH, Mr. BRIDGES, Mr. BROWN of Michigan, Mr. BROWN of New Hampshire, Mr. BURKE, Mr. BYRD, Mr. BYRNES, Mr. CAPPER, Mrs. CARAWAY, Mr. DAVIS, Mr. DIETERICH, Mr. DONAHEY, Mr. DUFFY, Mr. ELLENDER, Mr. FRAZIER, Mr. GEORGE, Mr. GERRY, Mr. GILLETTE, Mr. GLASS, Mr. HATCH, Mr. HERRING, Mr. HOLT, Mr. JOHNSON of Colorado, Mr. KING, Mr. LA FOLLETTE, Mr. LODGE, Mr. LUNDEEN, Mr. MALONEY, Mr. MCADOO, Mr. MINTON, Mr. MURRAY, Mr. NORRIS, Mr. OVERTON, Mr. PEPPER, Mr. POPE, Mr. RADCLIFFE, Mr. REYNOLDS, Mr. SCHWARTZ, Mr. SCHWELLENBACH, Mr. SMITH, Mr. STEIWER, Mr. THOMAS of Oklahoma, Mr. TRUMAN, Mr. TYDINGS, and Mr. WALSH answered to their names when called.

Mr. CONNALLY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. NEELY in the chair). The Senator will state it.

Mr. CONNALLY. Is a quorum present?

The PRESIDING OFFICER. The Chair will inform the Senator in just one moment.

Eighty-seven Senators have answered to their names. A quorum is present.

Mr. McKELLAR. Mr. President, the purpose of the pending bill of course is to turn over to Federal authority the jurisdiction and powers of the States to deal with the crime of lynching, or, as Mr. Mark Sullivan, says—

> To deal with this rarest of crimes the bill is introduced in Congress.

This bill has been debated, I believe, in the short extra session and in the present session for approximately 3 or 4 weeks. In the District of Columbia, of course, crimes are handled entirely by the Federal Government. Mr. Sullivan says—and we all know it is the truth—that the "rarest crime" in this country today is the crime of lynching; it is the most infrequent crime. There is but one lynching to something over 16,000,000 inhabitants; and now, with the marvelous progress which has been made in reducing the number of lynchings from 231 down to 8, it is sought to turn jurisdiction over such crimes to the Federal authorities.

In that connection, I wish to read from an article published in the city of Washington concerning crime as it is combatted and handled by Federal authority. In the first column of the first page of one of Washington's daily newspapers, the Times, is the following headline:

BROWN CALLS AIDES TO MAP CRIME CHECK—SITUATION ALARMS POLICE OFFICIALS

(By William E. Ring)

The article is, as follows:

> With Washington in the grip of the most widespread crime wave of recent years, the high command of the Metropolitan Police Department gathered today to map ways of breaking the criminals' grasp.
>
> Meanwhile, at the District Building, Commissioner Melvin C. Hazen issued orders that every effort be exerted by the Department to abate the wave.
>
> TO ASK MORE POLICE

I wish Senators who are combining and confederating, if I may use that expression in an inoffensive sense, to take away the jurisdiction and power of the States over lynching

and turn it over to Federal authority would listen to this. Commissioner Hazen said:

"No one knows better than I that the department is doing everything possible to route the criminal. This current wave of crime will be used as a powerful argument by me and the other Commissioners to have Congress provide at least 25 additional policemen in the 1939 Budget. The department today is woefully undermanned, but is doing the very best it can."

The current crime wave began before the Christmas holidays and with few let-downs has continued until today.

Maj. Ernest W. Brown, superintendent of police, summoned to his office inspectors L. I. H. Edwards, Bernard W. Thompson, who is chief of detectives, James Beckett, Edward J. Kelly, William Holmes, and B. A. Lamb for the "break the crime wave" conference.

PATROL CONSIDERED

Revival of the 24-hour bandit patrol, which was established during the Christmas shopping period and during the Christmas holidays, was being considered. The officials also considered canceling all leave of absence of policemen until the wave is broken.

The police officials were spurred to action by the depredations of two drunken gunmen who last night staged seven hold-ups—

Seven hold-ups in one night right here in the city of Washington, right under the eaves of the Capitol, almost within the view of Senators and Members of the other House—

in three sections of the city, while in other neighborhoods housebreakers, sneak thieves, and purse snatchers staged a crime carnival.

And yet Members of this body are seeking to turn jurisdiction of the eight crimes of lynching occurring in the entire country over to Federal authority, when there seems to be such an utter disregard of the criminal laws right here under the very wings of the Federal Government.

Hazen bitterly denounced the armed bandit.

Mr. Hazen is the Commissioner of Police, I believe, in the city of Washington. He "bitterly denounced the armed bandit." The bandit and the gangster are similar, and they are the ones who are excepted from this bill, for it is provided that this proposed law shall not apply to them, although they operate right here under our own noses.

This is what the Commissioner of Police said:

The armed hold-up man is a potential murderer. Jurists of our courts should mete out to the armed rats—

To the armed rats—

convicted of robberies the most severe penalty which the law allows. Although I am not keen about capital punishment, I am inclined to believe the death penalty should be made the maximum in cases where a person is shot to death or wounded during a hold-up.

Hold-ups and gangster murders all around and about us in a city under Federal control, and yet this "rarest of crimes," truly says Mr. Sullivan—this "rarest of crimes"—has taken up already nearly a month of the Senate's time. Eight crimes of lynching were committed in the entire country last year; and yet right here, where the newspapers are a unit in trying to fight crime and where the Federal Government has absolute constitutional and other power to deal with it, look what is happening:

DEATH PENALTY IN BILL

Representative JACK NICHOLS (Democrat), Oklahoma, chairman of the House District Tax Subcommittee, already has prepared a bill for introduction in Congress which will provide the death penalty as the maximum for persons convicted of armed robberies.

Ah, Mr. President, he will not get far with that bill. That bill will tread on somebody's toes.

I remember the poor young lady, whose home was in Brownsville, Tenn., who was raped at the end of the District of Columbia line after she got off a street car. Her fingers were cut off in order to get the rings therefrom; ruined and despoiled, her body was sent home in a coffin—and not a step was ever taken by the authorities here to mete out punishment. Yet the Senate, overlooking the crimes committed right here in our midst, is seeking to pass a bill concerning the rarest crime in America today. I challenge any Senator, from whatever State he may come, to whatever political party he may belong, whatever may be his opinions about this bill, to deny that lynching is the rarest crime in America today. Yet all this time is being taken, keeping this bill before the Senate. What for? In order to get rid of crime? No. If we wanted to get rid of crime, God knows we should start right here at home.

I am talking about the home of the United States Government; not my home and not your home, Mr. President, but the home of the United States Government, right here under the eaves of the Capitol. Why do we not look around us and adopt such measures as will do away with crime here in the District of Columbia, where we have constitutional authority?

That is the second newspaper that has taken a position about the criminal conditions in the city of Washington. I do not have to confine myself to the two newspapers from which I have already read. I have already read from the Evening Star and the Washington Times, and now I will read from the Washington Post of this morning. Not in the first column on the first page but in the third column on the first page occur this headline and the article which follows:

DRUNKEN PAIR HUNTED HERE IN SEVEN HOLD-UPS—ALL DETECTIVES MOBILIZED IN WIDE SEARCH FOR YOUNG BANDITS—SMALL GROCERS ARE CHIEF VICTIMS—RAIDS MADE IN HALF HOUR

All available squad and scout cars and every detective officer in the District last night searched the city for two drunken gunmen, who held up seven business establishments within half an hour, fired twice at the proprietor of a grocery store, and escaped in a small automobile.

Yet we have spent 30 days or, perhaps, 4 weeks of the time of the United States Senate discussing whether or not we will pass a law turning over to Federal jurisdiction punishment for the "rarest of crimes" in the United States. It is utter nonsense. This bill ought to be withdrawn, and I here and now call on our leader to have it withdrawn. It ought to be withdrawn; it ought not to be before this body. A Senator said to me the other day—and I believe the statement is true—that if, by chance, this bill could be voted on by secret ballot, it would not get five votes from the entire Senate.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. BARKLEY. Inasmuch as the Senator has called on me to have the bill withdrawn, I think I ought to say, as I have said heretofore, that I was not responsible for the fact that the bill is here any more than I am responsible for the fact that any other bills are here unless they happen to be voted out by a committee of which I am a member.

I regard it as my duty, in the position which I happen to hold, to cooperate with the committees of the Senate to secure the fair and reasonable consideration of any bills which are brought out by committees; and even if I had a desire to withdraw this bill, of course the Senator from Tennessee knows that I could not do so. The only way in which this bill could be withdrawn is by a vote of a majority of the Senate. Any Senator has a right to make a motion to substitute something else for this bill at any time, just as he has the same right to make a motion to substitute any other bill for any other measure that is on the calendar and under consideration. Since the Senator has singled me out, however, and called upon me to withdraw the measure, I insist that I regard it as much a part of my duty to cooperate with the Judiciary Committee in attempting to see that this measure receives fair and reasonable consideration as I would in regard to any other bill which might be the unfinished business of the Senate as the result of the action of a committee of the Senate. I do not think I am subject to be called upon by any Member of this body to withdraw this bill because it is objected to any more than I ought to be called upon to withdraw any other bill which may be under consideration to which there is objection.

It is not within my province to withdraw the bill. It is within my province, and a part of my duty, to help facilitate the consideration of measures brought here by committees. This bill was brought here by the Committee on the Judiciary, and, so far as I know, without a minority report. I do not recall that there is a minority report, although I do not understand that the bill received the unanimous support of the committee.

Under those circumstances, I think the Senator from Tennessee, on second thought, will recognize the justice of my position in that regard.

Mr. McKELLAR. Mr. President, of course the Senator from Kentucky personally could not withdraw the bill; but his advice as the leader of the majority that it be withdrawn would have a tremendous effect. I hope that upon consideration he may agree with me that after the bill has been before the Senate for nearly 4 weeks, during which we have been discussing the rarest of crimes in the United States, we might do something else.

The Senator talks about cooperation with the Committee on the Judiciary. I ask him to look around and see how many members of the Judiciary Committee are cooperating with him. When I looked around a little while ago there was not one of them who was cooperating with him at all. Not one of them has raised his voice in behalf of the bill. Not a single member of the Judiciary Committee has been cooperating with the Senator from Kentucky. Since the Senator interrupted me, it is true that one member of the committee, the Senator from Indiana [Mr. VAN NUYS], has come into the Chamber, but before that time not a single member of the committee was present; and the Senator knows, and I know and every other Senator knows, that practically no members of the Judiciary Committee are actively supporting this bill.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. BARKLEY. I do not know whether the members of the Judiciary Committee are to be criticized or congratulated for their unwillingness to undergo the punishment that I have to undergo day after day in the way of remaining here and listening to this discussion. [Laughter.]

Mr. McKELLAR. I congratulate them; and if the Senator were to cooperate with his colleagues on this floor, in my judgment it would not be long before the Judiciary Committee itself would ask that the bill be withdrawn.

But I continue to read, Mr. President, as to how crime is dealt with by Federal authorities right here within the sound of my voice. I am reading from the Washington Post of this morning:

All available squad and scout cars and every detective officer in the District last night searched the city for two drunken gunmen, who held up seven business establishments within half an hour, fired twice at the proprietor of a grocery store, and escaped in a small automobile.

With a reward on the heads of the bandits, police were watching all bridges leading into nearby Virginia, while police in nearby Maryland and Virginia counties were aiding in the search.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. McKELLAR. Just one moment, and then I will yield.

Think of it! I do not know how many policemen there are in the city of Washington. There were seven holdups in a half hour, and the police offered a reward to persons to find them. The police are offering rewards to citizens to point out these holdup men. Can you beat it? [Laughter.] If that is what is done by the Federal authorities, what are we going to do when we turn over lynching to them? Are we going to tell them to offer rewards? What sort of rewards are we going to offer—$50 for apprehending a man charged with rape, $25 for apprehending a man charged with attempted rape, and so on?

I see in the Chamber some members of the Committee on Appropriations who have served so faithfully with me on that committee. I am wondering what the members of the Committee on Appropriations are going to say when Federal officers come before them and want a large amount appropriated to offer rewards for the apprehension of those charged with permitting lynchings and attempted lynchings, and rapes and attempted rapes. It is perfectly absurd and nonsensical to take the right and the jurisdiction to deal with this question away from the States, which are doing it so well, and turn it over to the Federal authorities, who are not doing well even in our own city.

I now yield to the Senator from Texas.

Mr. CONNALLY. Mr. President, I was about to suggest to the Senator that he has read to the Senate an account of how two drunken highwaymen committed seven invasions of one of the rights of people under the fourteenth amendment—the protection of their property—in 30 minutes' time in the District of Columbia, under Federal law, when there were only eight lynchings in the entire United States in the year 1937; and now we are asked to turn that matter over to the Federal Government in the same way!

Mr. McKELLAR. Yes; here were seven invasions of the rights of citizens under the fourteenth amendment in half an hour, right under the eaves of the Capitol. These occurrences may not have been within the sound of everybody's voice, but I think they were almost within the sound of my voice. There were seven of them right here, where the sacred rights of citizens under the fourteenth amendment are being violated by our own employees who have the duty of enforcing the law on the subject; and Senators will notice the remedy proposed by Commissioner Hazen. I am sorry the Senator from Colorado [Mr. ADAMS] has gone out of the Chamber, because I think he is on the subcommittee of the Committee on Appropriations which has charge of the District of Columbia appropriation bill. I see the Senator from South Carolina [Mr. BYRNES] here, and I know he is on that subcommittee. Commissioner Hazen wants 25 more policemen to help the authorities here. It may be that the Commissioners are entitled to more policemen. I do not know what the facts are; but it does seem to me that it is not necessary for the police to offer rewards to citizens to arrest persons for crime right here in the city of Washington. If so, it is time we were dropping this bill and undertaking to pass proper laws to have the rights of citizens respected.

Mr. CONNALLY. Mr. President——

Mr. McKELLAR. I yield to the Senator from Texas.

Mr. CONNALLY. Is it the theory of the police that if they offer sufficiently large rewards, the criminals will come in and surrender?

Mr. McKELLAR. No; the article does not say that; but if we were to offer a reward of $5,000 for the arrest of a hold-up man, I think he might make a bargain in advance that he would receive only a 6 months' term in prison, with the hope that he might be pardoned within 2 or 3 months, or get out for good behavior in 4 months. Something like that might be done.

I am calling this matter to the attention of Senators for the purpose of showing them just what is proposed by the advocates of this bill. We are asked to turn over this matter to the Federal authorities, when the Federal authorities right here in the home of the Federal Government are letting crime go unchecked, as one newspaper said:

Officers were watching especially liquor establishments and beer parlors. All sections of the city were being patrolled, but the Southwest section, where most of the holdups occurred, was the center of the greatest concentration.

REWARD IS OFFERED

Determined to see the gunmen brought to justice—

Listen to this! I am reading from the Washington Post of this morning.

Determined to see the gunmen brought to justice, Inspector Bernard Thompson, chief of detectives, late last night offered a reward of $25 for apprehension of the lawless pair.

That is just $12.50 apiece. I do not think he will get very far with that offer.

Both bandits were described as being in their early twenties. One wore a leather coat and a green skull cap. He was blond, 5 feet 11 inches tall, and heavy set. The other also wore a leather jacket and a brown hat.

Not a derby. [Laughter.]

Both were described as being "tough and desperate" looking.

My heavens! It would never do for a policeman to arrest a man who was tough and desperate looking. [Laughter.] That would be a violation of all the rules.

The hold-ups came in amazingly rapid succession. Apparently the bandits sought to avoid police by robbing two adjacent business places, then speeding drunkenly on to find other victims.

We have a law here against speeding, and a law against drunken driving, and a law against hold-ups; and yet we are

asked to turn over the rarest crime in America—only eight instances of it having occurred in the entire Nation last year—to these same Federal officers, in part.

Most of the places preyed upon by the robbers were small grocery stores.

Perhaps they were hungry.

TOO DRUNK TO WALK

My heavens! Here are two bandits who are described in this newspaper as being "too drunk to walk," and all the policemen we have in the city of Washington were unable to catch them! [Laughter.] I wonder what was the matter. As the Senator from Texas [Mr. CONNALLY] says, one constable down in Texas would have had them in jail in less than 10 minutes.

As reports of the hold-ups grew—

Remember, Mr. President, these bandits were too drunk to walk, according to this newspaper. The reporters must have gotten that information somewhere. They have a way of doing that.

As reports of the hold-ups grew, an urgent broadcast was made—

Have you ever been in a taxicab when the police began to broadcast? How could two drunken men escape under those circumstances, when the police were broadcasting in every taxicab and in every other place in the city?

As reports of the hold-ups grew, an urgent broadcast was made to all police cars to spare no effort to capture the gunmen. A special detail of two squad cars early in the evening was assigned to the southwest area, and the detail was increased later.

If those men were too drunk to walk, I wonder how they escaped.

Mr. BAILEY. How were they moving?

Mr. MCKELLAR. I wonder how they were moving, as the Senator suggests. Listen to this:

Striking swiftly in the early darkness, the bandits first went to a gasoline station at Twenty-fourth Street—

Somebody knew where they were going. Somebody knew where they were.

Striking swiftly in the early darkness, the bandits first went to a gasoline station at Twenty-fourth Street and Benning Road NE. Here they pointed a revolver at David Frye, of the 1200 block of Staple Street NE., the manager, snatched $7 and speeded away.

They were too drunk to walk, but they were not too drunk to speed away in their car, where there is a law against speeding.

Next they went to a nearby filling station at Benning Road and Twenty-sixth Street, which they had visited two nights earlier.

At a military school which I once attended it would have been said that they were "ex all," they were escaping all punishment. These two men visited a place they had visited two nights earlier.

As the bandit car drove up, Millard Brickerd, of Chillum, Md., walked out to meet it.

"Beat it back in there where you came from and get us some money."

Here were two drunks, too drunk to walk, but in a car.

"Beat it back in there where you came from and get us some money," one of the men said as they both got out and drew guns.

It is remarable that two men too drunk to walk were not too drunk to draw guns. Somebody must have been scared around there. I wonder what was the matter with the telephone that they could not telephone the police? They might have found one.

"Beat it back in there where you came from and get us some money," one of the men said as they both got out and drew guns. They staggered drunkenly and reeked of alcohol, Brickerd told police.

"How did your boss like the hold-up the other night?" asked one.

"Not very well," answered Brickerd.

The robbers got $25 from the cash register. Brickerd told police one of them was so drunk he could hardly walk.

I wonder why Mr. Brickerd did not hold the man, who was so drunk that he could hardly walk. It may be that Mr. Brickerd was a small man.

Next the gunmen hastened to Southwest Washington, where they concentrated on grocery stores.

There were but two of these boys. They would not come under the proposed law. They could not be arrested under the proposed law, because there were just two of them. When two do something, it is no offense; but if there were three, then it would be an offense under this marvelous measure. But these were concentrated. There might have been three there, but they were concentrated to two. [Laughter.] At all events, I read further:

At 319 First Street SW. they stopped in front of a store operated by Louis Hillman and his wife Hinda. Inside also were two colored customers.

One of the bandits staggered in, pistol in hand.

"This is a hold-up—see," he said. Hellman opened the cash drawer and the robber scooped up $45, the day's receipts. He then turned his gun on one of the colored customers.

"You got any money?" he asked.

The customer said he had a quarter.

"Do you work for a living?" asked the gunman.

"Yes," answered the customer.

"Keep it, then," replied the robber.

That was generous. [Laughter.] No wonder the authors of the bill are excepting gangsters and racketeers from the operation of the proposed law. They are gentlemen. When they find a man who has worked for a quarter they do not punish him, they do not take what he has, they do not rob him.

"Keep it, then," replied the robber.

Quick-wittedness on the part of Mrs. Fannie Litman, her husband, Ban, and her son, Robert, foiled the gunmen when they invaded the Litmans' store at 337 Third Street SW. The Litmans were in their back living room when one of the men lurched in, gun in hand.

It does not state that he was drunk this time. Perhaps he had gotten a little sober after he gave the colored man back the quarter.

Mrs. Litman, thinking a customer was coming, stepped into the store. As soon as she saw the pistol she screamed and fled to the back room again.

Her husband and son snapped out the lights and slammed the door, locking it. The bandits got no loot there.

Abraham Butt, 30, proprietor of a grocery at 831 Sixth Street SW., was a target for the bandits' blazing guns when they tried to rob him.

He was in a back room getting something for two customers.

It does not say what that something was. Perhaps these two gunmen got something there; perhaps it was something that made them a little drunker than they had been.

He was in a back room getting something for two customers. When he came back he saw the customers with their hands in the air and one of the robbers brandishing his gun. Butt was wearing a white apron. When he saw the gun he began to run. Before he could move the bandit fired at him point-blank and then shot again as he fled without loot.

He shot at him! He would have killed him right here, almost in the shadow of the dome of the Capitol. Yet there are many Senators who want to turn over to Federal authorities the task of stamping out lynching, when the State authorities are now making such a splendid record.

Next the gunmen drove to the southeast. At 52 D Street they entered a District Grocery Store operated by Morris Bassin.

One of the men staggered into the store and poked his gun in the ribs of Bassin, took $25, and reeled into the street.

Winding up their swift spree of crime, the robbers went to 36 D Street SE., another grocery, where they held up Grove Dare, 20, and stole $15 in bills.

Mr. President, that is the third newspaper in the city which tells what a wonderful thing it is for us to turn over the authority of the States, without the slightest constitutional sanction, to the Federal Government.

I now read from another excellent newspaper published in our city, the News. There are big headlines here, across the top of the first page in this paper:

Extra police on tonight to fight off bandits.

There is one advantage in being a Senator. No one would ever hold up a poor Senator. The hold-ups know they would not get anything. They would rather hold up grocery stores.

This is a double column article:

Outburst of new wave of hold-ups and robberies—the second epidemic in 6 weeks—today drove a harassed police force—

This is a Federal police force, composed of authorities to whom we are asked to turn over the jurisdiction over eight lynchings in the country. They are harassed by what? Harassed by two drunken young men, about 20 years old, so these newspapers say, who were too drunk to walk.

Drove a harrassed police force into extracurricular activities.

Whatever that is.

Mr. BAILEY. That means outside the school.

Mr. McKELLAR. Let me ask the Senator from North Carolina what that means, because this is just a little outside of my understanding, and I am sure the Senator knows what it means. It says, "Drove a harassed police force into extracurricular activities." What kind of activities are "extracurricular activities"?

Mr. BAILEY. I understand that when the police force is unable to overtake two men who are too drunk to walk they have to get outside of the curricula. That is the only explanation I can give.

Mr. McKELLAR. They have to get out of the curricula. [Laughter.]

Mr. BAILEY. Whenever they cannot catch up with two men too drunk to walk they become extracurricular.

Mr. McKELLAR. I thank the Senator for his enlightening statement.

Mr. BARKLEY. Mr. President, does that have any relationship to ex parte or ex cathedra? [Laughter.]

Mr. McKELLAR. I refer the Senator from Kentucky to the Senator from North Carolina, who is handling the definitions of words for me today. [Laughter.]

Mr. BARKLEY. "Curricular" is an adjective, which is derived from "curriculum," which is supposed to be a course of study ordained at colleges, universities, and schools.

Mr. McKELLAR. "Curricula" is the plural of "curriculum," if I remember my Latin. [Laughter.]

Mr. BARKLEY. The Senator is correct, but I thought he had placed an "r" at the end of the word so as to make it "curricular."

Mr. McKELLAR. I said "curricula."

Mr. BARKLEY. In other words, "curricula" means two curriculums. [Laughter.]

Mr. McKELLAR. It means two or more curriculums. We will find out what it means.

Outburst of a new wave of hold-ups and robberies—the second epidemic in 6 weeks—today drove a harassed police force into extracurricular activities—

By the way, I see this is spelled "c-u-r-r-i-c-u-l-a-r." The Senator is right; it is an adjective. But "curricula" without the "r" would be plural. [Laughter.]

which will find all Washington highways patrolled by extra scout cars tonight and all plain-clothes men and detectives on prolonged duty.

I stop reading long enough to be serious for a moment and to say that I approve fully the efforts of the Washington police to catch these violators of the law, these men who are taking away sacred rights granted to citizens under the fourteenth amendment. One of those rights is the right of property. Seven people were robbed and deprived of that right last night, and one man was shot at. We have not heard about the women yet. I do not know what the next edition of the paper will show the fate of the women to have been. I commend the police for their efforts.

Action came after a conference of police heads this noon.

Mr. President, if it takes a conference of all the police heads to catch two drunken bandits in the city of Washington who are too drunk to walk, how long would it take and how many conferences would it require to catch three or more men who had been engaged in a lynching?

That is a question which I wonder if I might ask my distinguished and greatly beloved friend the Senator from Illinois [Mr. LEWIS]. How long does he think it would take? I know that I shall now receive a real answer, and the occupants of the galleries will look out for it. [Laughter in the galleries.]

Mr. LEWIS. Is the able Senator from Tennessee seeking from me something that takes on the form of a mathematical division, a mathematical subtraction, or abstraction, or a geological conclusion? [Laughter.]

Mr. McKELLAR. All of the things the Senator has mentioned might come into play. The statement in this splendid newspaper, the Washington Daily News, is:

Action came after a conference of police heads this noon.

That is, this conference was called to see what could be done as to the arrest of two drunken bandits about 20 years of age, who last night held up seven different establishments and robbed all except one, in which they got rid of them by turning out the lights. By the way, the police offered a reward for their capture, and the Senator from Illinois can take that into consideration. If it takes the authorities all that time to find two drunken young bandits, how long would it take them to find what is known as a mob in a lynching case? The Senator smiles at me; and I imagine he is in the same situation I am in. He could not tell. I could not answer the question, and I am not going to call on him to answer.

I proceed to read from this article:

A dozen brazen robberies during the night resolved Police Chief Brown to call his lieutenants together and determine a course of action.

Chief Brown called his lieutenants together. I think he ought to call in the authors of this bill. Surely the authors of the bill, this wonderful bill, aimed at eight crimes a year in the whole United States, can give the police authorities here in the city of Washington sufficient information to enable them to arrest two drunken bandits who were too drunk to walk. I continue to read:

Six extra squad cars will be on duty tonight in addition to the regular fleet.

I wonder what a fleet is. Perhaps the Senator from Texas knows.

Mr. CONNALLY. Mr. President, I do not know what such a fleet is, but I would say it was not fleet enough to catch the bandits. [Laughter.]

Mr. McKELLAR. The article continues:

Additional detectives will be on duty. Unless arrests are made today, every man on the force will particularly be on the lookout for two drunken youths, supposedly brothers, who perpetrated seven holdups in 35 minutes last night.

Today a house in Prince Georges County is under police watch.

My heavens, they are going outside of their jurisdiction! They are going over to Prince Georges County.

The article continues:

One of the youths was partially identified from a photo by one of the victims. Police are hoping they will come home when their spree wears off.

That is a delightful hope, and I join in it. I expect all the money they picked up will soon be spent, and I hope that when the spree wears off the Federal officers will be able to catch them. It is to Federal officers that we are asked to turn over the jurisdiction over lynching.

Detective Chief B. W. Thompson called all available detectives back to duty and asked the aid of suburban police in the capture of the "drink-crazed" pair. Reward of $25 was offered for their arrest.

Thompson said he expected to have the two in custody before night.

If they get them in custody what will they do with them? I address the Senator from Texas [Mr. CONNALLY], who is vigorously opposed to this bill, and ask him how much punishment has been meted out by the Federal authorities here in Washington and how many murders have actually been committed here. That information might be very enlightening to Senators in considering this bill.

Mr. CONNALLY. Mr. President, I will say to the Senator from Tennessee that the Senator from Texas has on his desk the report of the Attorney General, containing a list

of Federal crimes all over the United States, and the Senator from Texas will advert to that report later on during the debate.

Mr. McKELLAR. I thank the Senator.

The newspaper article continues:

In rapid succession the robbers struck at seven places within 35 minutes. Their car bore Maryland tags and was seen each time, but they managed to escape.

It seemed that the authorities found out everything in the world about these robbers, that they were too drunk to walk, what kind of car they had, what kind of clothes they wore, and the color of their eyes, but did not take the two robbers into custody. I continue reading from the article:

Dave Frye, gas station manager at Twenty-fourth Street and Benning Road NE. was the first victim.

Mr. President, I will not read the remainder of the article, but I ask that it be printed in the RECORD at this point. It is a description similar to the one that was read previously.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Washington Daily News of January 13, 1938]

Outburst of a new wave of holdups and robberies—the second epidemic in 6 weeks—today drove a harassed police force into extracurricular activities which will find all Washington highways patrolled by extra scout cars tonight and all plainclothesmen and detectives on prolonged duty.

Action came after a conference of police heads this noon. A dozen brazen robberies during the night resolved Police Chief Brown to call his lieutenants together and determine a course of action.

EXTRA SQUAD CARS

Six extra squad cars will be on duty tonight in addition to the regular fleet. Additional detectives will be on duty. Unless arrests are made today, every man on the force will particularly be on the lookout for two drunken youths, supposedly brothers, who perpetrated seven holdups in 35 minutes last night.

Today a house in Prince Georges County is under police watch. One of the youths was partially identified from a photo by one of the victims. Police are hoping they will come home when their spree wears off.

REWARD IS OFFERED

Detective Chief B. W. Thompson called all available detectives back to duty and asked the aid of suburban police in the capture of the drink-crazed pair. Reward of $25 was offered for their arrest.

Thompson said he expected to have the two in custody before night.

In rapid succession the robbers struck at seven places within 35 minutes. Their car bore Maryland tags and was seen each time, but they managed to escape.

ONE VICTIM FEARED DEATH

Dave Frye, gas-station manager at Twenty-fourth Street and Benning Road NE., was the first victim. He turned over $7. Five minutes later, two blocks away, at Twenty-sixth Street and Benning Road NE., they forced Millard Brickerd to give up $27 of his gas-station receipts. Brickerd said the same pair robbed him 2 days ago, and he feared they had returned to kill him.

Moving to the southeast section, the gunmen forced Morris Bassin, grocer, at 53 D Street SE., to hand over $25. Walking across the street, they threatened Grover Dare, 20, grocery clerk, at 36 D Street SE., and robbed him of $15.

Wildly waving his gun over his head, and aided by his companion, the head bandit boarded their sedan and sped away.

Louis Hillman, grocer, was their next victim. Only one of the pair entered the store at 319 First Street SW. He grabbed $45 from the cash register.

Screams frightened off the blond-haired member of the crazy team at the store of Benjamin Litman, 337 Third Street SW. Litman told police his son, Robert, was in a rear room and screamed when he saw the bandit's gun. Litman snapped out the lights.

The only shot fired during the robbery rampage was at the store of Abraham Butts, 831 Sixth Street SW. Butts ran into a rear room when he saw the gun. He was not hurt, and the gunman fled empty handed.

One of the pair was about 19, blond curly hair, pimply face, and wore a brown leather jacket. His companion, about 17, had on a brown hat and dark lumber jacket.

Bernard Kaesen, of 944 Shepherd Street NW., was robbed of $4.30 and his cab last night at New Hampshire Avenue and G Street NW. Kaesen later recovered his cab at Twentieth and G Streets NW.

When Goldie S. Paregol, 34, of 1529 Upshur Street NW., slowed her auto for a traffic light last night at Sixth and L Streets NW., a Negro youth jumped on the running board and grabbed her purse, containing a $65 check and 45 cents in cash.

Mr. McKELLAR. Mr. President, what are we asked to do? We are asked to turn over to the Federal authority criminal jurisdiction that now belongs to the States and will belong to the States even if we shall pass this bill. Even though it is seen how splendidly the State authorities have performed their duties in the protection of human life, in the reduction of crime, and in making lynching the rarest of all crimes in America. Yet we have spent a month trying to take this jurisdiction away from the States and turn it over to the national authorities.

Senators, those of you who are sitting here, silent, not defending this bill, those of you who say you are going to vote for it and yet will not defend it, I appeal to you to withdraw this infamous measure which will do more injury than you can ever imagine, which will injure the people whom you propose to help here by taking away from the States the authority which they now have, and which they are exercising in such a splendid manner. That authority is being exercised in a manner far superior to the way in which criminal jurisdiction is exercised right here in our midst in the District of Columbia, far superior to that way in which it is exercised anywhere, because all other crimes are increasing, while the crime of lynching alone stands out in bold relief as the only crime in America that is decreasing, and it is very rapidly decreasing. If Senators will just leave it alone for a very short period of time, they will find that the crime of lynching will no longer occur in America.

Mr. BAILEY obtained the floor.

Mr. BARKLEY. Mr. President, at this time I contemplate moving an executive session, and then moving that the Senate take a recess.

Mr. BAILEY. Then may I yield, but holding the floor for tomorrow?

Mr. BARKLEY. So far as I am concerned; yes.

Mr. BAILEY. Very well.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. NEELY in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

Mr. SHEPPARD, from the Committee on Military Affairs, reported favorably the nomination of Brig. Gen. Percy Poe Bishop, United States Army, to be a major general in the Regular Army from January 1, 1938, vice Maj. Gen. Douglas MacArthur, retired December 31, 1937.

He also, from the same committee, reported favorably the nomination of Col. Jay Leland Benedict, Infantry, to be brigadier general in the Regular Army from January 1, 1938, vice Brig. Gen. Percy P. Bishop.

He also, from the same committee, reported favorably the nominations of sundry officers for appointment, by transfer, in the Regular Army.

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nomination of Peter M. Davey to be postmaster at Bridgeport, Conn., in place of E. C. Martin.

The PRESIDING OFFICER. The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the clerk will state in order the nominations on the Executive Calendar.

AMBASSADORS EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES

The legislative clerk read the nomination of Joseph P. Kennedy to be Ambassador Extraordinary and Plenipotentiary to Great Britain.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Hugh R. Wilson, of Illinois, to be Ambassador Extraordinary and Plenipotentiary to Germany.

Mr. LEWIS. Mr. President, at this point I beg to call the attention of the Senate to the fact that this is the designation of a gentleman who has long been in the public service of our country, a man who through his very splendid efforts rose from a very humble place in the Department of State until he reached the point where he is now designated to be a diplomat sent out by our Government to a country which welcomes him and will justly give us splendid applause for his services.

He is from the State of Illinois, from the city of Evanston, which is renowned for its educational facilities. This gentleman has had a remarkable career and has splendidly represented his State.

I ask that his nomination be confirmed.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Norman Armour, of New Jersey, to be Ambassador Extraordinary and Plenipotentiary to Chile.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

UNITED STATES HOUSING AUTHORITY

The legislative clerk read the nomination of J. Austin Latimer, of South Carolina, to be Director of Information, serving as assistant to the Administrator.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Leon H. Keyserling, of New York, to be General Counsel of the United States Housing Authority.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF LABOR

The legislative clerk read the nomination of Isador Lubin, of the District of Columbia, to be Commissioner of Labor Statistics.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

That concludes the Executive Calendar.

RECESS

The Senate resumed legislative session.

Mr. BARKLEY. I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock p. m.) the Senate took a recess until tomorrow, Friday, January 14, 1938, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 13 (legislative day of January 5), 1938

UNITED STATES ATTORNEY

Toxey Hall, of Mississippi, to be United States attorney for the southern district of Mississippi, vice Robert M. Bordeaux.

APPOINTMENTS, BY TRANSFER, IN THE REGULAR ARMY

TO CHEMICAL WARFARE SERVICE

First Lt. Harold Walmsley, Infantry, with rank from August 1, 1935.

Second Lt. George Robert Oglesby, Infantry, with rank from June 12, 1935.

PROMOTIONS IN THE REGULAR ARMY

To be lieutenant colonel

Maj. James Ellis Slack, Cavalry, from January 6, 1938.

To be major

Capt. Harry Nelson Burkhalter, Infantry, from January 6, 1938.

MEDICAL CORPS

To be lieutenant colonel

Maj. Forrest Ralph Ostrander, Medical Corps, from January 21, 1938.

To be captains

First Lt. James Augustus McCloskey, Medical Corps, from January 22, 1938.

First Lt. Robert John Hoagland, Medical Corps, from January 23, 1938.

First Lt. James Leo Tobin, Medical Corps, from January 31, 1938.

First Lt. Allen Nelson Bracher, Medical Corps, from January 31, 1938.

DENTAL CORPS

To be captain

First Lt. Carvel Clark Ellison, Dental Corps, from January 20, 1938.

CHAPLAIN

To be chaplain with the rank of captain

Chaplain (First Lt.) Thomas Hampton Reagan, United States Army, from January 28, 1938.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 13 (legislative day of January 5), 1938

AMBASSADORS EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES

Joseph P. Kennedy to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Great Britain.

Hugh R. Wilson to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Germany.

Norman Armour to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Chile.

UNITED STATES HOUSING AUTHORITY

J. Austin Latimer to be Director of Information, serving as assistant to the Administrator, United States Housing Authority.

Leon H. Keyserling to be general counsel of the United States Housing Authority.

DEPARTMENT OF LABOR

Isador Lubin to be Commissioner of Labor Statistics, Department of Labor.

HOUSE OF REPRESENTATIVES

THURSDAY, JANUARY 13, 1938

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Infinite Spirit, that which is seen is temporal; that which is not seen is eternal. O Master of the hidden power, be Thou our souls' desire. Do Thou build monuments of love in the hearts of men and reecho Thy soundless voice everywhere. Keep in our remembrance that life consists not in the abundance of things we possess. Grant, our Father, that we may so strive that others may be blest and cheered by the spirit and fruit of our labors. By faith do Thou lead us through doubt, endure temptation, and cleave steadfastly to Thee. As custodians of our Government, inspire us with courage, and may we rekindle confidence in the breasts of all faithless and mistaken men. O God, may self not seek its own delight, but through crowded and lonely places let us feel for all their biting strokes of need and want. We pray that our aspiration may be to conform our will to Thine, seeking no reward but of giving joy and happiness to others. In the name of our Elder Brother. Amen.

The Journal of the proceedings of yesterday was read and approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Latta, one of his secretaries.

EXTENSION OF REMARKS

Mr. SNYDER of Pennsylvania. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by including an address which I delivered on educational activities of the United States.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ROBERTSON. Mr. Speaker, I ask unanimous consent to extend my remarks by inserting in the Appendix a radio address by former Senator Hawes on the subject of conservation progress.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

COMMITTEE ON CLAIMS

Mr. DOUGHTON. Mr. Speaker, I offer a privileged resolution which I have sent to the Clerk's desk.

The Clerk read as follows:

House Resolution 400

Resolved, That EDWARD L. O'NEILL of New Jersey be, and he is hereby, elected a member of the standing committee of the House of Representatives on Claims.

The resolution was agreed to.

EXTENSION OF REMARKS

Mr. SNELL. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing a speech I made last night over the Columbia Broadcasting System.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

ITEM VETO AMENDMENT

Mr. LAMBERTSON. Mr. Speaker, I ask unanimous consent to address the House for 2 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. LAMBERTSON. Mr. Speaker, yesterday there was the supposition here that the veto rider on the independent offices appropriation bill only applied to that bill, but we have discovered that under the broad terms of the amendment it applies to all appropriation bills. In other words, the other night here we committed ourselves to a very grave proposition dealing with all appropriation bills.

I want to tell you another thing that is in this rider. It does not provide that the President shall report any of these items within any certain time. It does provide that Congress shall have 60 days after he acts to override his cut, but there is nothing in the amendment that prevents the President of the United States from vetoing items in appropriation bills the last day of the session or after a sine die adjournment has been agreed upon, and he could even wait until the next session of Congress to do it. There is nothing in the resolution to prevent him from doing this very thing.

Mr. COCHRAN. Mr. Speaker, will the gentleman yield?

Mr. LAMBERTSON. If the gentleman can answer that statement, I will.

Mr. COCHRAN. Will the gentleman yield to me?

Mr. LAMBERTSON. Only to answer that statement. I do not yield if you cannot answer it.

Mr. COCHRAN. Will the gentleman yield so I can ask the gentleman a question?

Mr. LAMBERTSON. If you can answer my statement, I will.

Mr. WOODRUM. Mr. Speaker, will the gentleman yield to allow me to answer it?

Mr. LAMBERTSON. I will.

Mr. WOODRUM. The amendment provides the same authority given in a resolution to President Hoover and President Roosevelt, that 60 days of a session of Congress must elapse before his action reducing an item becomes effective.

Mr. LAMBERTSON. But it does not say when he must veto it nor does it say 60 days of a session—just 60 days. He can wait until the last day of a session to veto an item and then when Congress adjourns they have 60 days after they have adjourned, to override the veto. Neither one of the gentlemen has answered my proposition.

[Here the gavel fell.]

Mr. COCHRAN. Mr. Speaker, I ask unanimous consent to proceed for 1 minute to ask the gentleman from Kansas a question.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. COCHRAN. Mr. Speaker, I ask the gentleman this question: Does the gentleman know of any law upon the statute books that requires the President of the United States to spend every dollar that the Congress of the United States appropriates?

Mr. LAMBERTSON. That has not anything to do with this proposition.

Mr. COCHRAN. Oh, yes; it has.

Mr. LAMBERTSON. This is a proposition to let the President veto an item, whole or in part, of an appropriation bill, and there is no limit as to when he vetoes it. It can be in this Congress or the next Congress or on the last day of a session, under the language of the amendment of the gentleman from Virginia, and I challenge anybody to answer that.

Mr. COCHRAN. But the gentleman voted for bills giving this same power to both Mr. Hoover and Mr. Roosevelt.

Mr. LAMBERTSON. The gentleman is begging the question and does not answer my statement.

Mr. COCHRAN. Mr. Speaker, there should be no confusion over the amendment offered by the gentleman from Virginia [Mr. WOODRUM]. I say this because it has been before this House on several occasions and thoroughly discussed. President Hoover was given this power by a Democratic Congress; and, of course, Republicans, or at least a great majority of Republicans, in the House at that time voted for the authority we extended to President Hoover. I voted for it, and I likewise voted for the similar authority vested in President Roosevelt in 1933. There was a time limit on both resolutions, but there is no time limit on the amendment of the gentleman from Virginia [Mr. WOODRUM]. It not only applies to President Roosevelt but to future Presidents.

Mr. Speaker, I have given this matter a great deal of attention, and under the leave granted me to extend my remarks it is now my purpose to express the conclusions I have reached.

This amendment would authorize the President to eliminate or reduce by Executive order appropriations made by that act or any other act of Congress. But the amendment would only authorize the President to take such action with respect to the appropriations made by any act after the enactment of the act containing the appropriations. I repeat, Mr. Speaker, after the enactment, after the legislative process is completed, after the President has approved the act, after the veto power is completely and absolutely exhausted, then, and only then, would the amendment come into effect with respect to any act making appropriations.

This amendment is not an item veto. It does not attempt or purport to attempt to enlarge or affect in the slightest degree any phase of the Presidential veto power. It does not purport to come into operative effect with respect to any act making appropriations until that act has by virtue of the President's signature passed beyond his power to veto and become the law of the land. It is perhaps natural that it should have been thought by Members of Congress and by the newspapers that this amendment was item veto legislation. The item veto has been much in the public eye recently, and it is not surprising, therefore,

that the present proposal aimed at the same evil as the item veto but approaching the solution of that evil from an entirely different avenue, should be confused with it.

I will not at this time attempt to discuss the constitutional aspects of legislation granting the President the power to veto items in appropriation bills, though I may say that while such legislation would be novel in character cogent arguments could be advanced in support of its constitutionality. But I wish to state definitely and categorically that that question is not involved here.

The present amendment has nothing to do with vetoing. It merely gives to the President a portion of the power which the Congress has already conferred upon him in whole on a number of occasions in the past. By this I mean to say that Congress has several times, the most notable instance being the Economy Act of 1932, as amended, authorized the President to abolish in whole or in part any governmental function, activity, or agency whenever he found and declared, after investigation, that such abolition would be in the interest of economy or increased efficiency in administration. Under the reorganization provisions of the Economy Act of 1932, as amended, when functions, activities, or agencies were abolished, the appropriations made in connection therewith were required to be impounded and returned to the Treasury. Under that act, if the President abolished a function, he wiped out the appropriations for that function not merely for the current fiscal year, as would be the case in connection with appropriations eliminated under the present amendment, but for good, unless Congress by legislation established that function anew. It seems clear almost beyond the necessity for argument that if the President can be authorized, as he has been, to eliminate governmental functions, which have been set up by acts of Congress, as well as the appropriations that support them, he can be authorized by appropriate legislation to eliminate or reduce merely appropriations and not functions.

The constitutional question involved, therefore, is not whether the President's veto power can be expanded by an act of Congress, but whether Congress can validly delegate to the President the power to examine appropriation acts after their enactment and, under standards laid down by Congress, eliminate or reduce unwise or excessive appropriations from such acts. This question has been answered by the courts and the Attorneys General in connection with the reorganization provisions of the 1932 act. The validity of those provisions as a proper delegation of authority has been sustained by the Federal courts, as well as former Attorney General Mitchell and the present Attorney General.

The provisions of the present amendment are closely patterned after those of the 1932 act, and the amendment has the same sound constitutional basis. It authorizes the President to eliminate or reduce by Executive order, in whole or in part, appropriations made by acts of Congress whenever, after investigation, he finds and declares that such action will aid in balancing the Budget or in reducing the public debt, and that the public interest will be served thereby. This closely parallels the machinery by which the President was authorized under the 1932 act to abolish functions and their supporting appropriations. I call your attention in this connection to the fact that the Warren reorganization bill, H. R. 8202, containing provisions substantially identical to those of the 1932 act, passed this House at the end of the first session of the Seventy-fifth Congress, the present Congress.

The amendment also contains the same provisions with respect to the coming into effect or disapproval of Executive orders issued under its authority as applied with respect to reorganization Executive orders under the 1932 act. Thus, it provides that whenever the President issues an Executive order under its provisions, the order must be submitted to Congress while in session, and shall not become effective until 60 days after such transmission, unless the Congress shall by law provide for an earlier effective date. Congress, therefore, will have a further check on the President's action under this authority, since no elimination or reduction of appropriations will become effective until Congress has had an opportunity to indicate its disapproval.

I ask the Members of this House to study this amendment carefully. But they must first disabuse their minds of any concept that this is an appropriation item veto provision. Any constitutional questions that may be involved in the consideration of item veto legislation are not present here, and they serve merely to becloud the issue. I believe that those of you who will give this amendment the careful study which it deserves will conclude, as I have, that it is one of the most constructive pieces of legislation that has been introduced in the Seventy-fifth Congress.

Mr. Speaker, I was present when this amendment was offered. I understood it thoroughly, although I had no idea it was to be advanced, and I pleaded with the gentleman who made the point of order to withdraw it, which he did, because I realized its importance. This amendment should remain in the bill. It places additional responsibility upon the President, which I am sure he will be perfectly willing to assume, and, further, if he is given the power, I am sure it will be reflected, when the time comes in the next fiscal year to make an accounting of Government expenditures.

EXTENSION OF REMARKS

Mr. PHILLIPS. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by including therein correspondence and telegrams with certain officials of a magazine in Connecticut responsible for a scurrilous attack on the President of the United States.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. MAVERICK asked and was given permission to extend his own remarks in the RECORD.

Mr. DIMOND. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein a copy of a letter written by me.

The SPEAKER. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. CELLER. Mr. Speaker, I ask unanimous consent to extend my remarks and to include therein a very brief resolution adopted by the National Grange.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. COCHRAN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. RUTHERFORD. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include therein a letter received from a constituent.

The SPEAKER. Is there objection?

There was no objection.

Mr. DONDERO. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include therein a letter I wrote to the President of the United States.

The SPEAKER. Is there objection?

There was no objection.

TREASURY AND POST OFFICE APPROPRIATION BILL, 1939

Mr. LUDLOW, from the Committee on Appropriations, reported the bill (H. R. 8947) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1939, and for other purposes (Rept. No. 1666), which was read a first and second time, and, with the accompanying papers, referred to the Committee of the Whole House on the state of the Union and ordered printed.

Mr. TABER. Mr. Speaker, I reserve all points of order on the bill.

The SPEAKER. The gentleman from New York reserves all points of order on the bill.

Mr. LUDLOW. Mr. Speaker, I am directed by the Committee on Appropriations to advise the House that the committee has made a reservation in connection with this bill for the offering of a committee amendment with respect to

section 2 of the independent offices appropriation bill, adopted on the floor, if such amendment should be deemed advisable, after action by the committee on the subject matter of that section.

Mr. SNELL. Mr. Speaker, will the gentleman yield?

Mr. LUDLOW. Yes.

Mr. SNELL. Mr. Speaker, I submit a parliamentary inquiry. I would like to know what the meaning of that reservation is. I cannot understand any reason for a committee making any such reservation if it desires to offer an amendment.

The SPEAKER. If that remark is addressed to the Chair, the Chair would say there is some confusion in his mind about the matter. The Chair has not the bill before him. The Chair refers the gentleman to the gentleman from Indiana.

Mr. LUDLOW. Mr. Speaker, at a meeting of the Committee on Appropriations this morning, discussion was had of the provision inserted in the independent offices appropriation bill with reference to the item veto. It is desired by that committee to give further consideration to that matter, and the committee, I understand, will meet tomorrow, and in the meantime the committee directed me in presenting this privileged report to make the statement that I have just made.

Mr. SNELL. Then it really carries no special substance.

Mr. LUDLOW. It is only informative to the House.

Mr. O'CONNOR of New York. Mr. Speaker, will the gentleman yield?

Mr. LUDLOW. Yes.

Mr. O'CONNOR of New York. What can be done about it in this bill? The item veto in the independent offices appropriation bill applies to all appropriation bills. In what possible way can the House, if it so desires, correct that situation in this bill?

Mr. LUDLOW. Mr. Speaker, there was discussion of the matter in our Appropriations Committee today. No action was taken, but a desire was expressed to consider the matter further. There was some discussion of whether to present as an amendment to this bill a provision exempting this bill from the terms of that amendment. As I have stated, no action was taken. There was discussion among the members and a desire was expressed to consider the offering of an amendment to this bill to take it out from under the blanket provisions of the amendment adopted to the independent offices appropriation bill.

Mr. O'CONNOR of New York. That would make a rather anomalous situation. If we just exempt this appropriation bill from the item veto when all of the others would be subject to it.

Mr. LUDLOW. I think when the committee meets that the discussion will go further and that it will consider the matter with reference to all other appropriation bills.

The SPEAKER. The gentleman from New York [Mr. SNELL] propounded a parliamentary inquiry of the Speaker. The Chair yielded to the gentleman from Indiana to reply to the gentleman from New York. In view of the statement made by the gentleman from Indiana it seems to the Chair that the subject matter of the statement has nothing to do in a parliamentary way with the pending bill.

Does the gentleman from Indiana desire to make any request with reference to the control of time for general debate upon the bill?

Mr. LUDLOW. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 8947) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1939, and for other purposes. Pending that I desire to reach some agreement with the gentleman from New York [Mr. TABER] with reference to the general debate and the control of the time. I ask unanimous consent that the time be equally divided between the gentleman from New York and myself. What is the thought of the gentleman from New York?

Mr. TABER. Mr. Speaker, I suggest that general debate continue through the day and tomorrow. I believe that much time will be required to properly cover the situation.

Mr. LUDLOW. Will not the gentleman agree to a modification of that and permit general debate to run throughout the day and then we can tell tomorrow better how we are situated with regard to further general debate.

Mr. TABER. Very well.

The SPEAKER. The gentleman from Indiana moves that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 8947; and pending that asks unanimous consent that general debate continue throughout the legislative day today, the time to be equally divided between himself and the gentleman from New York [Mr. TABER]. Is there objection?

There was no objection.

The SPEAKER. The question is on the motion of the gentleman from Indiana.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 8947, with Mr. GREENWOOD in the chair.

The Clerk read the title of the bill.

Mr. LUDLOW. Mr. Chairman, I ask unanimous consent that the first reading of the bill may be dispensed with.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. LUDLOW. Mr. Chairman, I yield myself 40 minutes.

Mr. Chairman, in preparing the Treasury and Post Office Departments appropriation bill for the fiscal year 1939, your subcommittee has been actuated with a desire to do something more than render lip service for the cause of economy. We have had in mind the blessings which would come from a balanced Budget in stabilizing the industrial situation, in strengthening normal business operations and employment, and in giving cheer and encouragement to the taxpayers in general. We believe that in this direction lies the prospect of a continued healthy national recovery and a transfer of millions from relief projects to regular jobs. We realize, of course, that the savings that can be effectuated on a single appropriation bill will not go far toward balancing the Budget, but we have endeavored within our limitations and the scope of our authority to do our part in carrying out a program of real retrenchment.

The Treasury and Post Office Departments appropriation bill, as we submit it to you for your approval, carries a total of $1,400,552,286, which is $175,862,722.94 below the appropriations carried in the 1938 bill. We have reduced the Budget estimates $7,916,050. In no instance have we increased a Budget estimate, and we have decreased 73 items submitted to us by the Budget, these cuts ranging from a few thousand dollars in some items to as high as a million dollars in other items.

While we have cut deeply, it has been our constant aim to grant every dollar necessary to render adequate service. We recognize the fact that both of the great Departments covered by this bill have important duties to perform, and it has been our purpose to provide the funds to enable every service to function properly and in accordance with the public interest.

The total of the appropriations for the Treasury Department carried in this bill for the next fiscal year is $610,862,627, a reduction of $180,804,328.94 compared with the appropriations for the current fiscal year. We reduced the Budget items for the Treasury Department $4,462,300. The bill provides appropriations for the Post Office Department and the Postal Service in the sum of $789,689,659, an increase of $4,941,606 over the appropriations for the current fiscal year, and we reduced the 1939 Budget estimates for the Post Office Department and the Postal Service in the sum of $3,453,750.

The very large reduction in appropriations recommended for the Treasury Department, amounting to $180,804,328.94, as compared with the fiscal year 1938, needs further explanation. Of this amount $130,000,000 is a reduction in the ap-

propriation for the old-age reserve account under the Social Security Act. The Social Security Act was launched as a great experiment, a venture into a vast unexplored field, and at the time it was enacted estimates were made based on actuarial tables in regard to the obligation which the act would impose upon our appropriation bills in the years to come. The theory of the act was that annual appropriations would be made and placed in an old-age reserve account, these appropriations to be in equal measure with the revenues to be collected under the act which were to be covered into the Treasury as miscellaneous receipts.

The revenue receipts from this source are not coming up to the original estimates of the actuaries, and it is not necessary to make the appropriations estimated in the original computations. For the current year the appropriation made to the old-age reserve account is $500,000,000. There will be a carry-over of $115,000,000 on July 1 next, and the Budget Bureau estimates that $360,000,000 is all that will be necessary in this item for the next fiscal year. A change from a monthly to a quarterly basis of collecting old-age security taxes also tends to reduce the appropriation required. It is believed that the reappropriation of $115,000,000 and the additional $360,000,000 estimated by the Budget, making a total of $475,000,000, will provide all of the funds needed for the operation of the Old Age Security Act during the next fiscal year, and we have allowed the full amount of the estimate.

It is not my purpose to review all of the items carried in this measure, as the details are covered in the report, but where items are of unusual interest or the action taken was outside the ordinary scope, I shall try to acquaint the Committee with the reasons that motivated your subcommittee in reaching our decisions.

Action by Congress at the last session reducing the interest rate on farm mortgages held by the Federal land banks from 5.04 percent to 4 percent and interest on farm mortgages held by the Federal Farm Mortgage Corporation from 5 percent to 4 percent, has its sequel in appropriations carried in this bill to meet this increased statutory obligation. The appropriation to the land banks on this account is fixed at $20,500,000, an increase of $5,500,000 over the current year, and the appropriations to cover payments to the Federal Farm Mortgage Corporation is fixed at $8,200,000, an increase of $3,200,000 over the current year's appropriation on that account. The amounts allowed for these items, while below the Budget in the sums of $700,000 and $150,000, respectively, are believed to be more accurately gaged than the Budget estimates, as they are based on the total volume of mortgages outstanding at the end of the first quarter of this fiscal year, and these figures were not available when the Budget estimates were prepared.

For years we have carried a title of appropriations under the head of Emergency Banking, Gold Reserve, and Silver Purchase Acts. Emergency banking has virtually been washed out of the picture and the personnel required for administering the Gold Reserve and Silver Purchase Acts is diminishing. By consolidations with regular activities and by more reductions of personnel we have sought further to limit the charge which these acts impose upon the Treasury for operating purposes. As long as the acts remain on the statute books, however, we shall be called upon to enforce them, and apparently we have about reached the end of economies that may be effectuated in that direction.

The estimates that came to us from the Budget provided for a merger of the force that guards Treasury Department buildings in the District of Columbia with the Secret Service, and for the transfer of appropriations for that purpose from the office of Chief Clerk of the Treasury Department to the Secret Service establishment. To your subcommittee this did not seem to be a wise merger, as Treasury guards are in no sense detectives or Secret Service operatives. They are paid on a lower scale, and there was reason to apprehend that if fused into the Secret Service they would automatically sooner or later advance into the higher brackets of pay, beyond the normal compensation paid to guards, and thus a large unjustifiable additional charge would be fixed on the Treasury. Instead of approving the merger we have created a new title in the bill known as guard force, and have granted $306,840 to pay the salaries of those who fall under that title. We have provided that this force is to be under the supervision and direction of an operative of the Secret Service to be detailed for that purpose by the Secretary of the Treasury, thus assuring all of the advantages advanced for the proposed merger without actually making Treasury guards members of the Secret Service operating force.

More than a quarter of a year has elapsed since the estimates were submitted to the Budget by the Departments, and we found that in a good many instances declining prices, not anticipated 4 months ago, have so affected the situation that reductions in Budget estimates may be safely made on that account. For instance, while we granted an increase of $75,000 in the item for printing and binding, Treasury Department, we cut the Budget estimate $40,760 when reminded that prices of paper and other supplies have declined sharply in recent months. For the same reason we reduced the stationery estimate for the Treasury Department $35,000, while granting an increase of $30,000 over last year to cover expanding needs. For the purchase of distinctive paper used in manufacturing United States securities we allowed $1,000,000, which is an increase of $283,100 over the 1938 appropriation but a reduction of $149,000 below the Budget figure. The estimate was based on a program to build up a high reserve. The price of distinctive paper is now at its peak—41 cents a pound.

Mr. MICHENER. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield.

Mr. MICHENER. Is this the paper upon which are printed the Government obligations?

Mr. LUDLOW. It is.

Mr. MICHENER. Is the increase needed because we are going to issue so many more bonds and create so many more obligations for the year 1939 than heretofore?

Mr. LUDLOW. I was about to answer that a little further along. The Department has a program under which it considers it essential to build up a reserve of stock of this paper. The stocks have become very much depleted.

Mr. MICHENER. The gentleman means a reserve stock for future obligations?

Mr. LUDLOW. A reserve stock of distinctive paper.

Mr. MICHENER. That does not seem to indicate that we intend to curtail the issuing of more paper money and these other obligations.

Mr. LUDLOW. I think that really has not anything to do with it. I think it is part of the normal operations of the Treasury Department. At times they build up the stock of this paper. They take exceptional means to build the stock up to provide an adequate reserve supply. I really think there is nothing abnormal about it.

Mr. MICHENER. The estimate is based upon a program to build up a high reserve of this distinctive paper when its price is now at its peak.

Mr. LUDLOW. I think the price at the time the estimate was prepared was 41 cents a pound.

Mr. JENKINS of Ohio. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield.

Mr. JENKINS of Ohio. Does the Government make its own distinctive paper?

Mr. LUDLOW. No; this distinctive paper is made under contract; and I may state that the field of bidders is very much circumscribed. Very few firms are able to produce this kind of paper.

Mr. THOMPSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield.

Mr. THOMPSON of Illinois. Does this include the paper on which the currency is printed as well as the paper on which securities are printed?

Mr. LUDLOW. That is true. As I stated, the estimate is based upon a price of 41 cents a pound. It is felt by your subcommittee that by the next fiscal year distinctive

paper, following other paper prices, may show a decline and that it would be sound business procedure to reduce the estimate by $149,000 and await results. If prices should fall, it may be possible for the Department to attain its high ceiling of reserve within the amount we have allowed. If prices do not fall, no serious harm could come through a slower accumulation of reserve.

The Customs Service asked for 157 new employees in the field, costing $300,000 per annum, and 10 new employees in Washington, costing $30,560 per annum. We allowed half the increase asked in both brackets, based on a showing that customs receipts have dropped off very perceptibly in recent months and it was not believed that all of the additional personnel estimated for months ago before the decline became noticeable will actually be needed.

The Internal Revenue Bureau asked for 659 new positions, mainly to devote to social-security duties and to catch up arrearages, and we allowed about 70 percent of the estimated requirements. We increased the appropriation for expenses of assessing and collecting taxes from $58,240,520 in 1938 to $58,700,000 in 1939, an apparent increase of $459,480. However, it is an actual increase of $700,000, due to the fact that the 1938 appropriation included a nonrecurrent item of $240,520. The Internal Revenue Service is a vitally important and expanding service, but we believe that this increase of $700,000 will take care of its service requirements in good shape.

Declining prices also enabled us to cut some of the estimates for the Coast Guard without in any way impairing the service. For instance, for fuel and water we allowed $1,500,000, an increase of $25,000 over 1938 but a cut of $75,000 below the Budget. Our action was predicated on the fact that unit prices on December 15 were away below the prices that prevailed in September, when the estimates were prepared. Fuel oil, one of the main items, dropped from $1.60 to $1.27 per barrel and gasoline from 14.08 cents to 13 cents a gallon.

We have allowed for important new units of equipment for the Coast Guard, including $270,000 to purchase three new airplanes to replace five old ones and $700,000 to build two new harbor cutters.

We have provided for increased personnel needs of the United States Public Health Service by allowing for 20 additional commissioned officers—10 for the new National Cancer Institute and 10 for the new narcotic farm at Fort Worth, Tex. The total recommended for the United States Public Health Service is $21,692,200, a net increase of $545,220 over the current appropriations. We have provided funds to cover automatic promotions and to provide for equipment and expenses of operating the new marine hospital at St. Louis and the new hospital for narcotic addicts at Fort Worth. We also make the usual recommendation for an appropriation of $8,000,000 for grants to States for public-health work provided for in the Social Security Act.

A marked reduction in requisitions by the Treasury Department on the mints for coinage has enabled us to reduce our recommendation for the Bureau of the Mint to $2,311,920, or $161,640 below the 1938 appropriation. We have at the same time increased the appropriation for operation of mints and assay offices by $212,400, that amount being necessary to maintain the new silver depository at West Point, N. Y., and to transfer to that point a large quantity of silver bullion now stored elsewhere.

We are providing $11,000,000 to carry on the 3-year public-building program authorized at the last session of Congress. This amount, added to the carry-over of the balance of the $23,000,000 appropriated last year, will provide ample funds to continue the program expeditiously.

In connection with improvements at the Government Printing Office, an estimate came to us asking for an increase in the authorization from $5,885,000 to $8,798,000 and for an appropriation of $3,500,000 in cash. Your subcommittee visited the Government Printing Office and made a close inspection, embracing all features of the proposed construction and other improvements. We were impressed with the need of constructing the proposed annex building and providing the other essential improvements that are comprehended in the program. The present annex building, which is the identical building chosen by Abraham Lincoln as the first home of the Government Printery, is dilapidated to an extent that it is unsafe, and its further use is not practicable. We believe, however, that by eliminating from the program certain nonessentials that are more decorative than necessary and by readvertising for bids a saving of $750,000 or possibly as much as $1,000,000 could be accomplished.

Mr. ROBSION of Kentucky. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield.

Mr. ROBSION of Kentucky. I observe that the gentleman and his committee have exercised quite a lot of independence in disregarding Budget estimates. If the Senate approves the action taken by the House the other day permitting the President to disregard the action of Congress on appropriations, to what good purpose is the independence of the gentleman's committee and other committees? What purpose can it serve? After all, we have given power to the President to cut up, cut down, cut out, or disregard any action taken by the House on appropriation bills.

Mr. LUDLOW. The views of my friend from Kentucky are very interesting and illuminating, but I would rather not be led quite so far afield as to discuss the so-called Woodrum amendment at this time. Our action on this particular item, as I have stated, was directed to the fact that the unit prices on December 15 were away below the prices that prevailed in September.

Mr. CROWE. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield.

Mr. CROWE. I notice on page 47, line 14, the proviso:

Provided, That the character of the exterior construction materials for Annex Building No. 3 shall be that contemplated in the original cost estimates for the project.

Is it the opinion of the gentleman and his committee that this would exclude the use of material other than brick for this extension?

Mr. LUDLOW. I think it was the opinion of the majority of the committee that the same material should be used in the annex that is used in the other building, they being twin buildings.

Mr. CROWE. Would not the gentleman be favorable to a little progress, the use of something a little more substantial, the construction of a building which would be there for all time if necessary? Does he not feel that we could very well provide a material that would be better and more in keeping with the beautiful city of Washington and the National Capitol?

Mr. LUDLOW. Answering the gentleman I can only repeat what I have already stated. The majority of the subcommittee was convinced that the material in the annex should be the same as the material used in constructing the old building.

Mr. CROWE. I have in mind, if the gentleman please, a material that is widely used in the city of Washington for buildings, which when one considers durability and length of life from every standpoint, is second to none, Indiana limestone or other limestone?

Mr. LUDLOW. I compliment the gentleman on being a very, very able representative of the leading industry of his district. I have a great deal of sympathy with his interest in obtaining a market for that product. This, of course, is a matter that would require the consideration of the full committee. It was considered, I think, from the viewpoint of a building that would be in harmony with the surroundings. It was thought that it would be out of harmony unless it were made of the same material as the present building. Another important factor was the differential in cost.

Mr. CROWE. The differential in cost might be none, or very little. In the case of the Bureau of Printing and Engraving the same objection was made—that limestone would cost more. It did cost a few thousand dollars more, not very

much, approximately $30,000, but the general appearance of the building and the durability of the construction far exceeded the additional outlay. The committee and the House finally decided that the appropriate thing to do was to face that building with stone. It has been faced with stone and it will be a monument to the city of Washington. The same thing would be true with respect to this annex to the Government Printing Office. Would it not be legislation on an appropriation bill and subject to a point of order?

Mr. LUDLOW. I do not think so, so far as that is concerned. I am not arguing the merits of the gentleman's contention, but it certainly is not subject to a point of order.

Mr. TOBEY. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from New Hampshire.

Mr. TOBEY. I appreciate the remarks of the last speaker; but while we are considering proper materials for construction of the proposed Printing Office building I want to suggest a material of which it may well be said, "The remembrance of quality remains long after the price is forgotten." I refer to the imperishable and eternal granite of the New Hampshire hills.

Mr. LUDLOW. Pursuant to this belief we have increased the authorization to $7,000,000 and have provided $2,500,000 in cash. Information that comes to us indicates that there is great eagerness among contractors to bid on public works and with costs apparently on the decline we believe it is the part of wisdom to make further efforts to effect economies on this particular project. We are taking this attitude solely as a safeguard of the Government's financial interest and without any reflection on the worthiness of the project.

I shall now deal briefly with the part of the bill that relates to the Postal Establishment. As all of us know, the Postal Establishment is largely a service organization. Roughly speaking, 80 percent of the appropriations carried in our Post Office appropriation bills are to pay for personal services. The mail must be handled and personnel must be provided to handle it. With an expanding volume of mail as we emerge from the depression allowance must be made for manpower to carry on.

With extreme care to guard against crippling the service we have allowed the full Budget estimate of appropriations for personal services connected with handling the mails. For clerks and employees at first- and second-class post offices we recommend for next year $198,000,000 as against the appropriation of $195,000,000 for the current fiscal year. For letter carriers we have given our approval to the Budget estimate of $138,000,000 which is the same as the appropriation for the current year. For the 20,000 employees of the Railway Mail Service we allow the Budget estimate of $57,500,000, an increase of $550,000 over the appropriation for the current fiscal year.

The liberality of these appropriations is attested by a circumstance that has happened since the original estimates were made. The first estimate of postal revenues for the fiscal year 1938 was $761,250,000 and for 1939 the estimate was $795,500,000. Later developments have shown that these figures are too high and later estimates have been submitted by Postmaster General Farley in a letter to me found on the last page of the postal hearings, reducing the 1938 estimate of receipts by $8,750,000 and the 1939 estimate by $20,500,000. A forecast of less receipts indicates a smaller volume of mail to be handled than originally anticipated but in order to be on the safe side and to give the Postal Service all the manpower needed we have made no reduction in personnel based on a smaller postal income than originally expected. The Postal Service is forging ahead in a gratifying way, notwithstanding a temporary slack and set-backs.

Mr. JENKINS of Ohio. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Ohio.

Mr. JENKINS of Ohio. The proportion of increase is greater than the increase in receipts, is that correct?

Mr. LUDLOW. I am coming to that right now.

Based on the new estimate of receipts in 1939 the gross deficit in that year will be only $14,689,659 (see page 18 of the report) and if we eliminate the nonpostal items that deficit would be changed into a surplus of $33,310,341.

For foreign mail transportation, including foreign air mail, we have allowed $14,787,275, an increase of $57,415 over 1938. For transoceanic air mail we are basing our recommendation on $1,706,000 for a full year's performance of trans-Atlantic service and $1,812,000 for a continuance of trans-Pacific service on 100 percent performance, each appropriation being reduced 10 percent, however, because of a budgetary requirement that the net appropriations be allowed on a basis of 90 percent performance. Due to delay in securing equipment and other reasons the trans-Atlantic air mail provided in last year's postoffice appropriation bill has not yet started, but it is expected that it will be in full operation by the beginning of the next fiscal year. For domestic air-mail service we have allowed $15,800,000, an increase of $1,300,000 over the appropriation for 1938. This appropriation provides for one new service from New York to Montreal, a distance of 330 miles, and for an increase of 1,676,000 in miles flown.

The legislative bill increasing route miles and miles flown, which has passed both branches of Congress, increases the route limit from 32,000 to 35,000 and the mileage to be flown from 45,000,000 to 52,000,000 per annum.

The appropriations we are carrying in this bill increase the route limit to 32,330 and the mileage flown to 46,676,000 so that under the new law the margin between the provisions made in this bill and the top ceiling allowed under the new law will be 2,670 route miles and 5,324,000 flown miles.

We have rejected a proposal ably presented to the subcommittee by Delegate DIMOND, of Alaska, for the establishment of shuttle air service from Tanacross to Seward, at a cost of $49,000 a year. The stem line air service from Juneau to Fairbanks, which was allowed last year, has not yet been established, owing to unexpected complications involving negotiations with Canada. The shuttle service proposed would connect with this stem line and we have put over the proposal without prejudice for further consideration when the Juneau-Fairbanks line becomes an operating service. That will be a pioneering venture which we believe will develop the needs and the practicability of further Alaska air service.

The inspection force of the Post Office Department now includes 585 inspectors and 15 inspectors in charge. The inspectors are the "eyes and the ears" of the Postmaster General and are a very vital part of the Post Office Establishment. The Department asked the Budget for 100 additional inspectors in 1939 and the Budget sent us an estimate for 40, of whom 5 were to be assistant inspectors in charge. We comprehend the importance of the inspection service but in view of the vital necessity of retrenchment and of making an approach to a balanced Budget we could not see our way clear to add such a large increment to the permanent personnel of the Government. We have disallowed the 5 new positions of assistant inspectors in charge and have allowed 10 additional inspectors, thus bringing up the total to 610. In the last 3 fiscal years Congress has provided 60 additional inspectors and we feel that the force has not by any means been neglected.

In framing this bill we have taken care not to overlook some of the poorest paid of our Government employees. We have provided $9,020 to give a one-step promotion to about 150 low-paid workers in the operating force of public buildings in the District of Columbia, and we have made available $187,000 to adjust the pay of about 3,000 custodial employees engaged in the operation of public buildings throughout the country. This amount will give a step-up to all those who on July 1 next have completed 1 year's service and who have not yet received a promotion. We feel that these faithful workers richly deserve the recognition which we have found it possible to extend to them at this time.

I have tried to cover the main features of the bill and I thank you for your patience. I would be insensible to my

obligations if I did not acknowledge in this presence my heavy debt of gratitude to the splendid gentlemen with whom I have the honor to be associated on the subcommittee—Messrs. BOYLAN, O'NEAL, DALY, JOHNSON, TABER, and DITTER—and if I may, I will add as an honest confession of the soul, right from the heart, that as a subcommittee chairman I would be hopelessly and irretrievably sunk if it were not for the friendly advice and unerring guidance of Marcellus C. Sheild, who has just completed 30 years of extraordinary efficient service as clerk of our Committee on Appropriations. [Applause.]

Mr. THOMPSON of Illinois. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Illinois.

Mr. THOMPSON of Illinois. I notice in the appropriation for rent, light, and so forth, that item has been reduced $100,000. Does that mean the Post Office Department is going to further reduce the rents paid for these little third-class offices throughout the United States, which I think have been ridiculously low for a number of years?

Mr. LUDLOW. I do not understand so.

Mr. THOMPSON of Illinois. Does the gentleman feel that $15 or $18 a month for a store building on the main street of a small community, to include also light, janitor service, and fuel, is proper compensation to be paid those taxpayers by this great Federal Government?

Mr. LUDLOW. I may say to the gentleman I do not. I do not believe a case of that kind would be affected by this bill.

Mr. TABER. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from New York.

Mr. TABER. Is it not a fact that the reduction comes as the result of moving into Federal buildings rather than in reduction of rents?

Mr. LUDLOW. It comes from that source, and does not apply to the case which the gentleman from Illinois has in mind.

Mr. STEFAN. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Nebraska.

Mr. STEFAN. Regarding Rural Mail Delivery Service, will the gentleman talk to me about that a minute?

Mr. LUDLOW. Yes. I may explain to the gentleman the Rural Delivery Service goes ahead with ample funds, and there is an allocation in this bill of $250,000 for new routes and extensions in the fiscal year 1939.

Mr. STEFAN. Does the gentleman think that is enough?

Mr. LUDLOW. There is the same amount and $150,000 additional made available also in the fiscal year 1938.

Mr. STEFAN. Does the gentleman think that is enough?

Mr. LUDLOW. Yes.

Mr. STEFAN. I want to pay a tribute to the Rural Mail Delivery Service, because I think the Rural Mail Delivery Service includes some of the finest Government employees in the employ of the Government.

Mr. LUDLOW. Undoubtedly.

Mr. STEFAN. That is true in my State especially.

Mr. LUDLOW. We are not in any way penalizing them in this bill.

Mr. STEFAN. We have been consolidating routes recently. Have we saved any money by doing so?

Mr. LUDLOW. I think some money has been saved; yes.

Mr. STEFAN. Is it going to be a definite program by the Post Office Department to continue the consolidation of routes?

Mr. LUDLOW. I imagine the consolidations have nearly all been effectuated and that there will be no more consolidations except where a carrier dies or where a carrier resigns.

Mr. STEFAN. Does the gentleman believe we have made some saving by doing that?

Mr. LUDLOW. Yes; I think so.

Mr. O'NEAL of Kentucky. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Kentucky.

Mr. O'NEAL of Kentucky. In reference to these low rentals, may I ask the gentleman if those follow competitive bidding?

Mr. LUDLOW. Yes.

Mr. GEHRMANN. Will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Wisconsin.

Mr. GEHRMANN. I notice there are reductions in reference to which my friend from Nebraska has already asked a question. I also notice, in connection with the star routes, there is a reduction of $149,000. I believe the star-route carriers are by far the lowest-paid Government employees today. It is a shame the way some of them operate.

Mr. LUDLOW. I may say to the gentleman, the star routes, of course, are let by bids. There is to be a reletting in connection with the largest contract zone, and the anticipation is the bids will be much lower and that this item ought to stand a reduction. Furthermore, the expenditure for star-route service in 1938 is less by $15,000 than we have appropriated for 1939.

Mr. GEHRMANN. There is another item here, travel allowance for postal clerks. As the gentleman from Nebraska has pointed out in connection with rural routes, we know that by consolidations into longer routes there has been a saving, but we also realize there are thousands of applications for extensions pending. I would think that the amount reduced there could have been used for this purpose.

Mr. LUDLOW. I repeat what I said to the gentleman from Nebraska. This bill carries $250,000 altogether for new routes and extensions next fiscal year 1939.

Mr. STEFAN. The bill states $250,000.

Mr. LUDLOW. Yes; I understand that, and $150,000 more has been made available during the present fiscal year 1938.

Mr. STEFAN. Does the gentleman think that is enough to take care of the extensions that are now needed in the rural parts of our country?

Mr. LUDLOW. Yes; I think so.

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield myself 8 additional minutes.

Mr. SCOTT. I notice the bill does not provide a ban on reenlistment allowances, but at the same time it does not provide money to pay them. Would the Coast Guard have to pay the reenlistment allowance if a definite appropriation is not made in this bill for the payment of such allowances?

Mr. LUDLOW. I do not believe so, although the Coast Guard could do so if it can find the money in its general fund. We did not carry this language for the reason it is clearly legislation and therefore subject to a point of order. We had had notice served on us that the point of order would be made, so it would be a futile gesture to carry the legislation in this bill.

Mr. SCOTT. However, an appropriation is not carried in the bill?

Mr. LUDLOW. The appropriation is not included in the bill.

Mr. GEHRMANN. Mr. Chairman, will the gentleman yield for a further question?

Mr. LUDLOW. I yield.

Mr. GEHRMANN. I notice cuts are made in the salaries of employees, but I also notice that in every one of the Postmaster General's offices, from the First Assistant on down, there is an increase in the allowance. I am wondering if this increase is necessary. Must these offices have a larger personnel or increased pay, when the money therefor will be taken from money which would ordinarily go to the low-paid employees on star routes or rural routes, or in other branches of the mail-delivery service? Can the gentleman explain why it is necessary to increase the allowance in every one of the Postmaster General's divisions?

Mr. LUDLOW. We cut the Budget estimate deeply, as the gentleman understands, but it was necessary to grant some increases on account of the manifest fact that the mails are expanding and increasing. We had to provide certain personnel to meet this increased demand.

Mr. VOORHIS. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from California.

Mr. VOORHIS. Can the gentleman tell me how the $360,000,000, which is appropriated for the old-age reserve ac-

count, compares with the revenues derived from pay-roll taxes?

Mr. LUDLOW. I may say to the gentleman that as far as was humanly possible an effort was made to make this figure exactly commensurate with the revenues. At least, it is an attempt to approximate the amount of the revenues.

Mr. VOORHIS. It is an attempt to appropriate into that account the same amount as is collected from the taxes?

Mr. LUDLOW. On an even basis.

Mr. DOWELL. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Iowa.

Mr. DOWELL. I notice there is a proposed appropriation of $14,787,000 for foreign-mail transportation. As I understand it, this includes all the foreign mail, including air mail?

Mr. LUDLOW. The gentleman is correct.

Mr. DOWELL. I notice the report also refers to the eight contracts which are now in existence. Are these eight contracts ones which have been in existence for some time, and do they refer to air transportation or other kinds of transportation?

Mr. LUDLOW. These are all 10-year contracts. None of them expires in the fiscal year 1939.

Mr. DOWELL. May I inquire how these contracts are made? As I understand it, these eight contracts are standing contracts.

Mr. LUDLOW. Yes; of 10 years' duration.

Mr. DOWELL. How long have they been in existence?

Mr. LUDLOW. I believe they expire at varying time, but none expires in the fiscal year 1939.

Mr. DOWELL. Are the contracts to which I have referred the same character of contracts as are made on competitive bids?

Mr. LUDLOW. They are made on competitive bids; yes.

Mr. DOWELL. When these contracts expire further contracts will be made on competitive bids?

Mr. LUDLOW. That is my understanding.

Mr. DOWELL. I notice the appropriation at this time is increased above what it was last year.

Mr. LUDLOW. I believe this is easily explained. Last year we appropriated for a part-year performance of trans-Atlantic air-mail service. The present appropriation is made on a full year's basis for trans-Atlantic mail.

Mr. DOWELL. It is all based upon the trans-Atlantic service?

Mr. LUDLOW. I believe this is the entire differentiation.

Mr. ENGEL. Mr. Chairman, will the gentleman yield?

Mr. LUDLOW. I yield to the gentleman from Michigan.

Mr. ENGEL. With reference to the question of the gentleman from California [Mr. VOORHIS], may I say that on page 21 of the hearings it is shown that in answer to a question of the chairman of the subcommittee Mr. Morgenthau said, referring to the Social Security fund:

> For example, next year we will receive approximately $1,000,000,000 net in excess of what the social security will cost.

In the face of this statement, are we justified in cutting the reserve from $500,000,000 to $340,000,000? Are we using the difference between those sums to balance the Budget?

Mr. LUDLOW. No; we are not. The social security estimate is based exclusively and entirely on the amount which it is estimated will be required to equal the revenues to be collected from the social-security taxes.

Mr. ENGEL. Secretary Morgenthau states you will receive a billion dollars more than you will pay out for the cost of social security, yet you are putting only $340,000,000 in the reserve fund. What becomes of the difference, if it is not used to balance the Budget?

Mr. STEFAN. Does it not go into the general Treasury?

Mr. LUDLOW. All the revenues from the social-security taxes go into the miscellaneous receipts of the Treasury. At the same time, as the gentleman knows, we have set up an old-age reserve account, and we are trying to appropriate into that account and keep even all the time.

Mr. ENGEL. The difference remains in the Treasury to be used for governmental expenses.

[Here the gavel fell.]

Mr. THOMAS of New Jersey. Mr. Chairman, I make the point of order a quorum is not present.

The CHAIRMAN. The Chair will count. [After counting.] One hundred and three Members are present, a quorum.

Mr. TABER. Mr. Chairman, I yield myself 40 minutes.

Mr. Chairman, in 1921 we passed the Budget and Accounting Act, and under this act we provided there should be a Budget officer, a Budget Director, who should gather information with reference to the various departments of the Government and figure out the amounts of money which should be appropriated for their maintenance. We also provided that the President of the United States should thereafter submit to the Congress when it convened the recommendations he desired to make as to the appropriations which should be provided for the ensuing fiscal year.

When the Budget was first organized, Charles G. Dawes, of Chicago, was the Director. He was succeeded by General Lord, who in turn was succeeded by Lewis Douglas, who had for many years been a Member of this House. On Mr. Douglas' retirement in 1934 a subordinate officer of the Treasury Department was made Director of the Budget. The Director of the Budget has not since been paid from the Budget appropriation. There is a vacancy in the office of Budget Director, and there is a vacancy in the office of Assistant Budget Director, the salaries for the two positions totaling $18,000 annually.

About 4 years ago, when the gentleman from Texas, Mr. Buchanan, was chairman of the Committee on Appropriations, that committee allowed the Budget 10 new men and appropriated liberal salaries for them. When the friends of the Budget came back to work the following year they found only four of the new men for whom we had provided had been appointed, and instead of getting first-class, high-grade men who might be of service in bearing down on the Departments and in reducing appropriations, there had been provided four clerks, receiving between $2,400 and $3,200 a year.

From the discussion we have had of the President's Budget and from the discussion we have had here on the floor in connection with the so-called Woodrum amendment which has come before the Congress, it is perfectly apparent the Budget needs to bear down and needs to reduce the estimates that are presented to the Congress.

The gentleman who occupies the office of Acting Budget Director, but is paid from the rolls of the Treasury Department, is a fine man. Perhaps if he were Budget Director, perhaps if he were independent and did not expect, as soon as it can be done, to be released and go back to the position he occupies as Commissioner of Accounts and Deposits in the Treasury, he would be a good Budget Director; but no man can occupy this embarrassing situation—paid from the roll of one of the largest spending agencies of the Government—and be the kind of Budget Director that we require in times of such a crisis as the Government is now facing.

I am hopeful someone will be appointed who will make it his business to go down the line and go into these departments and make the cuts that ought to be made.

Mr. COCHRAN. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield.

Mr. COCHRAN. The gentleman knows that from time to time employees from various Departments have been detailed to the Bureau of the Budget for work there. Has this practice been eliminated?

Mr. TABER. They still do that to a certain extent.

Mr. COCHRAN. The gentleman further knows that each one of the agencies and Departments has a budget officer?

Mr. TABER. Yes.

Mr. COCHRAN. They go to the Director of the Budget and they tell him the needs of their various agencies or Departments.

Mr. TABER. Yes.

Mr. COCHRAN. Has the Budget Director any help that he can send out to investigate and determine whether or not they actually need what they ask for?

Mr. TABER. He has some help, but has not enough, and it is not of the caliber it should be.

Mr. COCHRAN. Does not the gentleman think the Congress should authorize additional help for the Director of the Budget or the Acting Director of the Budget, Mr. Bell, for whom I have the greatest respect? I differ with the gentleman from New York that even in his capacity now of Acting Budget Director he refuses to bear down, because he has been bearing down, and does not the gentleman think if we would give him a reasonable number of investigators to go from Department to Department to check up on the requests of the various Departments and agencies he would be in a better position to tell them "yes" or "no" with respect to the amounts they request?

Mr. TABER. As I stated a moment ago, 10 high-grade men were provided for by the Committee on Appropriations 4 years ago, and instead of appointing them four clerks were appointed, drawing a salary of from $2,400 to about $3,200.

Mr. COCHRAN. Is that authorization in existence today?

Mr. TABER. It would be available if the Budget Director asked for it.

Mr. COCHRAN. I would like to have the Budget Director ask for it and appoint outstanding assistants to make investigations.

Mr. TABER. At the present time there is a vacancy in the office of Budget Director at $10,000, there is a vacancy in the office of Assistant Budget Director at $8,000, and instead of employing the largest number of high-grade men they can, it seems to me they have neglected the job. There is not any use of giving them more force when they do not take advantage of what is already provided.

Mr. COCHRAN. If the Director of the Budget would ask the Senate, it being too late now to make the request of the House, to give him sufficient money to fill the positions the gentleman refers to, does not the gentleman think that would be beneficial?

Mr. TABER. If they were appointed, yes. I do not think the addition of low-priced clerical help to the Budget office would amount to a hurrah.

Mr. COCHRAN. I fully agree with the gentleman.

Mr. TABER. I do not think anything can be accomplished in cutting down expenses in a substantial way except through the Budget. I do not think representatives of a committee of Congress can go into the Departments and investigate them thoroughly without creating an enormous amount of friction. I believe the only way this can be accomplished effectively is by having it done by the Bureau of the Budget, a direct representative of the President of the United States, who is the chief administrative officer. This is my opinion, with no politics in it at all, but simply my opinion as to the general financial situation of the Government; it makes no difference who is President or anything else.

Mr. COCHRAN. I agree with the gentleman and I do think the only way you are ever going to get information that will be of value is to have men who are capable and know something about the Government, paid a good salary directly answerable to the Bureau of the Budget, to make an investigation of the various Departments and other Government agencies from time to time to see whether or not they really need the money they tell him they need. He does not now have the time to check up on them and must take their word.

Mr. TABER. Tremendous expenditures are being made by agencies out of lump-sum appropriations. I do not know just exactly what the attitude of the Members of this House is toward lump-sum appropriations, but I do know how I feel about it.

Mr. COCHRAN. Ninety-nine percent of the abuses of spending money of the Government come from lump-sum appropriations, and the gentleman knows it.

Mr. TABER. Absolutely. I believe that in the bill we passed the day before yesterday there are a large number of lump-sum appropriations, which should be broken down so that there would be a separate appropriation for every activity and for personnel in the Department, for disbursements other than personnel for activities in the Department, a separate appropriation for the personnel in the field, and a separate appropriation for other expenses than personnel. I do not believe that we can control appropriations in any other way. I believe that we should have our hearings and break them down. The Subcommittee on the Treasury and the Post Office has uniformly taken that position and has refused to consolidate appropriations and make them lump-sum appropriations and I believe that has had a very good effect in enabling us to follow up these appropriations and to reduce them as far as we have been able to.

This bill carries a cut below the Budget of $7,910,000 in direct appropriations, and in limitations upon permanent appropriations carried in the bill of $500,000 more, or a total of about $8,500,000. Frankly, I do not think that is near enough. I think we ought to go further than that, but in the state of the situation that we are confronting, in the state that the Budget has allowed itself to get into by not taking advantage of every opportunity it could to put on the best material available and make an intensive study of this proposition, I do not believe that the committee could have gone much further. Every single change in an appropriation is a cut, and that indicates that we have yielded to no importunities for special favors. We have tried to have the interest of the whole country in mind, and have not asked for special favors for ourselves nor have we given them to anyone else.

There are some appropriations here that are not supported by the evidence, and I wish to call attention to some of them. The committee has carried $198,000,000 for clerks in the first- and second-class post offices. Frankly, I do not believe that the testimony justifies over $196,000,000. I shall not offer an amendment in the first instance with reference to that because we will have to take care of whatever is needed in that respect, anyway, and no great saving could result except in the matter of the credit that the Congress might have for cutting Budget estimates, but I am sorry that on that item the commitee has reported an exceedingly liberal amount beyond what is justified by the hearings, in view of the small increase that it is apparent is going to be shown in the postal receipts. That is, it is not expected that the deficiency that the Department will ask for will anywhere near reach $3,000,000 on this item, which was allowed at the time the Budget was thrown together. The same thing applies to the appropriation for city letter carriers, amounting to $138,000,000. That is too liberal. At the same time no useful purpose from the standpoint of the Treasury itself could be effected by a cut. Therefore, I do not believe that I shall offer an amendment on that in the first instance. Another item which is more liberal than the hearings would justify, although not so much so as the other two, is that relating to the Railway Mail Service. There the evidence does not justify quite as much as is carried, but the same thing applies to that. We have to provide whatever is needed.

One of the large items in the Post Office, that relating to rural mails, is just about what is needed to take care of the operations of the service and to meet the extensions that ought to be made. It has been cut as much as it ought to be, and I do not believe that it could stand any further cut. With reference to the regular operating expenses of the Post Office Department, I think we have cut in most places to just about what the Department ought to have for operation.

Mr. COCHRAN. Of course, coming from a large city I have no rural mail carriers, but I have repeatedly heard Members bitterly complain of the action of the Post Office Department in consolidating routes. Have they completed that work, or are they continuing to do it?

Mr. TABER. There are some consolidations, but not so many. The consolidations are now being based more on merit than they were some time ago.

Mr. COCHRAN. On merit? Were they not consolidated because of good roads? They used automobiles instead of the horse and buggy.

Mr. TABER. Some time ago they were making consolidations regardless. They were extending the length of some of the routes too much. I do not think the Department is extending routes so that one man has to try to serve more people than he should at the present time. I think they were doing it at one time, and that the entire service was more or less affected by it.

Mr. COCHRAN. The gentleman also spoke of city carriers. The gentleman knows that in the large cities, and I know it is so in my own district, there have been consolidations. For instance, three routes have been turned over to two men.

Mr. TABER. That was true a while ago.

Mr. COCHRAN. That is in the residence districts.

Mr. TABER. There have been break-ups in those consolidations in the last year, quite decidedly. That is general throughout the country.

Mr. COCHRAN. The thought I had was that they were trying to save money in the Post Office Department, and as far as I know the service to my people is just as good today as it ever was.

Mr. TABER. I know in my own territory the service is not nearly as good as it used to be but I do not think it is generally. The city districts have suffered decidedly and the rural districts have suffered, but the rural districts have not suffered so much because of consolidation of rural routes, as because of curtailment of train service and the small amount of Star Route Service that is provided as substitute for the train service.

Mr. COCHRAN. In my city of St. Louis, one of the finest postmasters we had was the last Republican postmaster. He was a man who had served 45 years in the Department when he retired. In this administration, naturally, we have a Democratic postmaster, who likewise is making an excellent record, but during the period that the Republican was in office, 8 years, and during the 4 years that the Democrat has been in office, I have been a Member of this House. I have only received one complaint from my constituents that the Postal Service was not satisfactory, and that was because that man wanted three deliveries a day rather than two which had been provided for.

Mr. TABER. I know nothing about the gentleman's territory.

Mr. MICHENER. I think the gentleman's territory must be exceptional, because it has been the policy of the Post Office Department in the last 3 years in many cities and in towns where there is city and village delivery service to reduce the number of deliveries. This may be due to the 8-hour day and 40-hour week, I do not know; but in Michigan, for instance—and I take it this is true throughout the country—there are fewer deliveries per day in all cities of any size. If this be as good or better service, I cannot believe it. I know in my home town where the residential sections formerly had two deliveries of mail a day they now have but one. Formerly for years there were four and five deliveries a day in the business sections of cities and towns, depending upon the mail delivered to the office. This service has now been cut to two deliveries a day. You may economize—and I am not objecting to that; but I am objecting to someone stating that the delivery service for incorporated towns and cities is as good today, or that it has been for the last 2 or 3 years, as it was for the 10 years preceding.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield.

Mr. DONDERO. I have had numerous complaints in my district because of the consolidation of routes and the change of post office which necessarily followed, and also complaints that the service is not what it used to be.

Mr. COCHRAN. Does not the gentleman come from Detroit?

Mr. DONDERO. I represent part of Detroit.

Mr. COCHRAN. And is not the city of Detroit gradually spreading out so far as the residence district is concerned?

Mr. DONDERO. I referred particularly to the service in Oakland County, because that is where the complaint comes from. That is outside of Detroit.

Mr. COCHRAN. We all know that the residence districts of large cities are spreading into localities where there never were residences before.

Mr. DONDERO. That may be true.

Mr. COCHRAN. Anybody who feels that two deliveries a day is not sufficient in a residence district is asking too much.

Mr. DONDERO. I am speaking from observations I have made and complaints I have received.

Mr. TABER. I know in my own home community all business people have ceased attempting to wait for the delivery of mail, but go to the post office to get it. They used to receive it at 8:30 in the morning. Now it is absolutely impossible to get it as a general rule before 9:30 unless they go after it. Almost all have abandoned complaining and are now chasing to the post office after their mail, as they used to have to do in a fourth-class office.

Mr. MASON. That is exactly the situation.

Mr. TABER. I think that is pretty generally the situation throughout the country. It may be different in St. Louis. The gentleman undoubtedly has been able to get more action out of the Post Office Department along that line than some of the rest of us. I shall have to give him credit for that.

Mr. COCHRAN. I have not been in the office of the postmaster of St. Louis more than once or twice since he was appointed 4 years ago. Continual complaint is made, however, about the deficit in the Post Office Department. If we expand to meet the wishes of all, there will have to be an increase in it.

Mr. TABER. Absolutely; there is no question about it.

Mr. COCHRAN. Does not the gentleman think, therefore, that they are receiving the service to which they are entitled and that a whole lot of them are asking for more than that to which they are really entitled?

Mr. TABER. I do not know. I think most of the people are ready to pay for the service they get. Now I am coming down to some particular items in the bill that I desire to discuss for a while. First, I desire to take up the Bureau of Research and Statistics in the Treasury Department. Here we find a bureau on at least four pay rolls in the Treasury Department. The situation developed into such a serious one that I asked every head of a bureau as he came up whether Dr. Haas was on his pay roll. This outfit has developed from nothing 2 years ago to a point where it is now upon four regular pay rolls of the Treasury, costing $358,000, with 152 employees. In addition to being on full pay rolls of the Treasury Department, it is on Emergency Relief. In addition to that, I presume, although I do not know and we had no evidence of it, that it is on the stabilization pay roll. There has been a transfer to the Bureau of Statistics from the Bureau of Internal Revenue of $100,000 from the appropriation provided for the examination of claims for the refunding of processing taxes, notwithstanding the fact that the language of that appropriation was such that this transfer of $100,000 is absolutely illegal.

I wonder if the Secretary of the Treasury does not think it is about time for the Comptroller General to make a closer examination of the books and operations of the Treasury Department. I wonder if the Secretary of the Treasury does not think that his office should be charged with this illegal transfer of $100,000 by the Comptroller General.

Mr. Chairman, the Comptroller General has been placed there to see that the acts of Congress are obeyed and to see that funds are expended as authorized by law. Here is absolute proof of the statement in the Comptroller General's report that the Treasury Department is being loosely run and that it needs a very considerable amount of application of the Budget law and the iron hand of the Comptroller General. May I say that the Comptroller General does not interfere in administrative matters, but he does protect the

integrity of the legislation of this Congress and prevents departments from doing illegal acts. He has no control over, nor does he attempt any control over, the administrative functions of the departments. He simply attempts to make them live up to the law. Here is a glaring case. Here is an opportunity for the Comptroller General to make the Treasury Department live up to the laws of the Congress. I call upon the Comptroller General to do that, and I hope he will meet this responsibility.

I am satisfied from the examination the Committee conducted into this Bureau of Research and Statistics that this outfit could perform every function it needs to perform for the sum of $60,000. I am further convinced that it could get every bit of information it ought to have and that it ought to give to the Department for this amount of money and that it could function properly. At the proper time I shall offer amendments to correct this situation.

Mr. Chairman, I call attention to another thing that seems to me of outstanding importance and that is the silver-purchase racket. Some people say that we should not by appropriation bills attempt to stop bad operations under laws that have been previously passed. May I say to you I believe it is the function of the Appropriations Committee of the House when it recommends appropriation bills to only recommend the appropriation of funds for the functions of the Government that should be carried on? I believe we should not recommend appropriations for those things which are bad and vicious and for those things which are getting the Government further and further into trouble.

Now, with reference to the silver-purchase operations. We have been buying silver ever since the 1st of January 1934. Month by month we have been buying it. Some of the time we have paid 64 cents an ounce, some of the time we paid 77 cents an ounce for newly mined silver, and some of the time we paid a figure in between. At the present time it is 64 cents an ounce. Last year it was 77 cents. We have absorbed all the newly mined silver into the Treasury. We have absorbed all the foreign silver and all the old domestic silver into the Treasury except what was used in the arts. Last year the price at which this type of silver was taken in was 45 cents an ounce.

Without this Government subsidy the market price of silver would be somewhere around 18 cents to 20 cents; perhaps less; at any rate, not more than that. There are perhaps 25,000 or 30,000 miners who indirectly benefit a little. Those who turn the newly mined silver over to the Government are the big corporations, such as the United States Smelting & Refining Co. and the American Smelting & Refining Co.

The purchase price of this silver has averaged $150,000,000 a year over a period of 4 years. The total cost has been somewhere around $600,000,000. It is a major racket which ultimately will destroy the credit of the Government.

The Secretary of the Treasury says it does not affect the budgetary situation of the Government, but let me call attention to the daily Treasury statement for January 10, which indicates that there are silver certificates outstanding of about $1,400,000,000. There are silver and silver dollars against this as an asset, and this appears right in the middle of the first page of the Treasury statement, of $1,445,000,000. Pursuant to the statute under which the silver is bought, this silver in the Treasury and the silver dollars are figured for the purpose of the balance sheet of the Treasury at $1.29 an ounce. This silver, if it were dumped on the market would not bring over 18 or 20 cents an ounce. If it was not for this statute, which requires fraudulent bookkeeping on the part of the Treasury of the United States, there is absolutely no question but that the operations of the Silver Purchase Act would seriously affect the budgetary position of the Government.

The sum of money required to administer the Silver Purchase Act is not large, perhaps $150,000 or $250,000 a year, or a little more.

When these items are reached in the consideration of the bill under the 5-minute rule I propose to offer amendments cutting out the items for the operation of this act, and I propose putting a limitation in the bill prohibiting the use of any funds appropriated under the act for carrying out the provisions of that act. I propose, at the end of the bill, if my amendments are not agreed to, to offer a motion to recommit the bill, and on this motion I intend to ask for a roll call, because I want to find out whether the membership of the House is going to stand longer for this racket which ultimately will ruin the Government and its credit. There is absolutely no sense in this subsidy, which means $150,000,000 a year.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield myself 10 additional minutes.

The whole philosophy of that bill is fallacious. One hundred and fifty million dollars a year means an average of $5,700 for each silver miner who produces any quantity of silver. We have passed a bill providing subsidies for farmers. Do you know how much this means for each farmer? On the basis of the statistics in the Yearbook of the Department of Agriculture it runs about $66 apiece. Do you know how much the subsidy for silver is? Five thousand seven hundred dollars per miner if the money filters through to the miner. You see the way we have treated the farmer and the way we have treated the miner. Is it not about time we stopped this monstrous operation on the Treasury?

Mr. JENKINS of Ohio. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield to the gentleman from Ohio.

Mr. JENKINS of Ohio. What justification is given for this great expense?

Mr. TABER. Many of the people who come from the silver districts say the silver-mining business cannot be operated profitably without such a subsidy. I do not like that kind of a subsidy, and I do not like that sort of way of tying up the Government's credit and the Government's money. I do not believe if the membership of the House understood the situation it would vote to appropriate a dollar to carry on that racket.

Mr. SAUTHOFF. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield to the gentleman from Wisconsin.

Mr. SAUTHOFF. In looking over the committee print I notice there is a reduction in the appropriations for the Star Route Service, the Railway Mail Service, and the Rural Delivery Service. I have received letters from some of the boys back home who say they have been laid off, particularly up in the Minneapolis area, and their work is being piled onto the men who are left in the departments. My colleague the gentleman from Wisconsin [Mr. GEHRMANN] asked in regard to this situation a while ago, and he mentioned that at the same time cuts are made in the appropriations for these services an increase is given the office of the Postmaster General. If there is to be a decrease in the number of men and in the number of star routes and rural routes, what is the necessity for an increase in the appropriation for the office of the Postmaster General?

My second question is, Are the men who are left in the Service required to work longer than a 40-hour week, and are they getting any increase in pay for the additional service which is loaded onto them?

Mr. TABER. There is plenty of money available at the present time for the payment of all railway mail clerks who are needed. If there is any trouble about it, and if sufficient railway mail clerks are not being employed to take care of the mail, it is a fault of administration, and not of appropriation. The hearings do not justify quite so large an appropriation for the Railway Mail Service as is being carried in the bill, but we are carrying the larger amount so there may be a margin available and so the Department may have plenty of money with which to operate.

The gentleman has referred to Rural Mail Service. This year there will undoubtedly be extensions of routes and new routes involving the expenditure of close to $600,000, and I

believe the Department is taking care of such extensions as are needed in as reasonable a way as it can.

With reference to the Postmaster General's Office there is no change in the amount recommended in this bill from the amount recommended and passed last year, $228,344.

I wish to talk for a moment about this baby bond business. The committee has reported, and I concur in its recommendation, a cut of $500,000 and a limitation in the public-debt service permanent appropriation for the purpose of issuing new bonds. This reduction was arrived at because we found that approximately a million dollars was supposed to be used for an intensive advertising campaign for the sale of baby bonds. We also found that as a result of the intensive advertising campaign which has been carried on for a year or so many poor people were buying small amounts of baby bonds, which they were obliged to cash before they received any interest on them. We found it is not good policy for the Government to conduct intensive campaigns for the sale of such bonds. We believe those who have plenty of money to invest in such bonds will invest in them without high-pressure salesmanship. We feel in fairness to the country and the poor people who have been deluded into buying these bonds the intensive advertising campaign should be done away with, and we can just as well save for the Treasury $500,000. We in the committee do not object to the bonds being widely held, but at a time when the credit of the Government is good enough so bonds can be sold without high-pressure tactics, we believe there is no justification for high-pressure tactics in the sale of baby bonds.

The results of the Treasury-Post Office bill, as compared with last year's, are as follows:

Reductions

Construction	$21,932,000
Do	100,000
Social security	140,000,000
Refund processing tax	15,000,000
Subscription to paid-in surplus, Federal land banks	20,000,000
	197,032,000
Face net reduction	180,804,328
Reappropriations	115,000,000
Balance of reduction	65,804,328
Social-security saving and nonrecurring items, above	197,032,000
Increase in Treasury Department on administrative and general expenses for 1939 over 1938	131,228,328

I am now going to talk for a moment on the Woodrum amendment, which was adopted the other day, and I am not going to yield to anyone, because I will not have time to get through within the hour I am allowed if I yield.

The Woodrum amendment permits veto by the President of items and reduction of items in appropriation bills. I am inclined to the belief this privilege should be limited in its scope so it could not apply to any appropriation for the maintenance of the legislative branch of the Government. I believe it should not apply to appropriations for veterans, because I do not believe the operations of the Veterans' Administration are carried on in an extravagant manner as a general rule. However, I cannot see a great deal of difference between the present situation as it now exists and the situation created by that amendment.

This is the practice at the present time, and no one can interfere with it except insofar as it relates to payments which are made in satisfaction of judgments or claims and matters of that character. The President is accustomed to go through the administrative items with the Budget officer and set up a reserve of every penny he believes cannot be properly used, and this is impounded in the Treasury, subject to release by the Budget officer and himself. He has the power not to spend funds appropriated by Congress. I doubt if anyone, unless he could show a personal interest, such as being a judgment creditor or a claimant, could possibly obtain a mandamus or anything of that sort which would force the administration to pay out funds for a general public purpose or for the operation of a bureau in a department. The only thing this amendment can do and do successfully is put a little bit of starch in the backbone of the President when he comes to cut down expenses.

Mr. COCHRAN. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield to the gentleman from Missouri.

Mr. COCHRAN. It also places an added responsibility upon the President which I feel confident he will assume.

Mr. TABER. It does; but that responsibility is all there when he submits his Budget to Congress.

Mr. COCHRAN. As the gentleman knows, there is absolutely no law which makes it mandatory upon the President to spend the full amount of the appropriations made by the Congress except for certain fixed charges.

Mr. TABER. Except in certain instances where claims accrue, I do not believe the President could possibly interfere with appropriations for salaries for the courts.

I do not think he could possibly hold up appropriations for salaries or expenses of the legislative branch of the Government the way the statute stands now, but with reference to the administrative agencies over which he has control, there is no statute that compels the expenditure of appropriations, and hundreds of millions of dollars are turned back into the Treasury every year because they are not spent, and this has always been the history of expenditures of the Government.

Mr. COCHRAN. For instance, you provide by statute for 50 classified positions in a given agency; if they only want to fill 35 of those positions, there is no law that can make them fill the other 15 positions.

Mr. TABER. The gentleman is correct, and that should be so, because if it were not so it would be impossible for the Government to function at all. Let me suggest one or two reasons. We are considering this bill today 6 months in advance of the date it becomes effective. It is effective for 1 year thereafter. Conditions so change with reference to many, many items in this bill that many things for which we appropriate, which we cannot foresee today, will arise and make it unnecessary to spend the money. Other conditions may arise that will make it necessary to spend other money, and the administration will have to come back to the Congress for a deficiency with respect to such items. This is the only way the Government can operate.

The thing that bothers me about the Woodrum amendment, and I so stated yesterday on the floor, is this. I am afraid Members of Congress are going to say, with this statute in effect, they have not as much responsibility as they used to have as to the amount of money to be appropriated.

I do not propose, as long as I am here, to let the Members get away from the idea they are responsible for the appropriation of funds and if they make appropriations that should not be made, they are to blame.

I believe every possible effort should be made to reduce appropriations. I do want to call attention to the fact that the Woodrum amendment does not in anyway give authority to the Executive to increase any appropriation or transfer any appropriation from the purpose for which it was appropriated to any other purpose. It only permits absolute and direct cuts, and I do not believe, as a general proposition, it will be found to work badly or against the interests of the legislative branch. The only way this could happen would be for the legislative branch to get the idea it did not have anything to do. I hope that regardless of whether the Executive cuts, this Congress will cut and save what money it can for the Treasury.

I have pointed out to the President in the independent offices bill a great many items where savings can be made and made without hurting a single, necessary service. I am going to do the same thing on other bills as they come up, wherever I see an opportunity, and, frankly, if the Woodrum amendment is retained I propose to call them to the attention of the President and suggest to him, as emphatically as I can, that these items ought to be cut, and that it is up to him, inasmuch as Congress has not met its responsibility to cut them, to cut them himself.

I think I have probably consumed about as much time as I ought to, and I am going to yield the floor.

Mr. ENGEL. If the gentleman will permit, there is a question that I have been concerned about considerably. On page 21 of the Treasury Department hearings referring to the social-security fund, in answer to a question of the chairman of the subcommittee, Secretary Morgenthau said:

For example, next year we will receive approximately $1,000,000,000 net in excess of what the social security will cost.

This bill reduces the amount of money placed to the credit of the security fund to $360,000,000, leaving a difference of $640,000,000 between the $1,000,000,000 which we have received in revenues. What becomes of the difference of $640,000,000?

Mr. TABER. I think I can explain that. The appropriation for next year is not $360,000,000; it is $475,000,000 because there is a reappropriation of $115,000,000 in addition to a direct appropriation of $360,000,000.

In addition to this, if the gentleman will turn to page 46 of the report he will find that under the Social Security Act $822,787,500 was estimated to go into a trust fund under the provisions of titles III and IX of the Social Security Act. I think this would make the difference. [Applause.]

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I ask unanimous consent to extend my remarks and to include there some tables I have prepared in connection with the bill.

The CHAIRMAN. The gentleman from New York asks unanimous consent to extend his remarks and to include therein certain tables he has prepared. Is there objection?

There was no objection.

Mr. LUDLOW. Mr. Chairman, I yield 30 minutes to the gentleman from Georgia [Mr. Cox].

Mr. COX. Mr. Chairman, the business recession now upon the country creates a situation that, unless quickly remedied, holds vastly greater possibilities of peril for this Government and this Nation than did the economic cataclysm of 1929. We have a Federal debt far higher than ever before reached. It will be somewhere above $40,000,000,000 by 1940. Between eight and eleven millions of our wage earners are reported to be unemployed.

We have a populace worn and wearied by 8 years of worry, fear, hardship, and privation. We have sectional and factional antagonisms, class divisions and prejudices which had not been fomented when we descended into the shadows of depression in 1929. We cannot endure another 8 years of that sort of national fear and worry and uncertainty and unemployment for great numbers of our citizens. We cannot contemplate the spending of another $16,000,000,000 by the Federal Government and still other billions by the local communities to be pyramided on top of the present public debt, which has already mortgaged the prospects of America far into the future.

We are told that this recession is the result of fears deliberately generated by the press and by big business which has embarked on a sit-down strike to compel abandonment of administration policies.

We are told that this recession is the result of too much taxation, too much attempted regulation, too much unwise regimentation, and too much interference by the Federal Government with private business.

Again we are told that the depression is largely the result of sit-down strikes by a large section of organized labor, resulting in numberless interruptions of industrial operations and the loss of great sums of purchasing power by stoppage of wages during these strikes.

We are told of internal warfare between two great labor organizations, each of which is forced by the exigencies of that warfare to promise and to endeavor to secure higher and still higher wages for its members, shorter and still shorter hours, and to further and still further upset economic equilibrium by ill-advised strikes and disorders, regardless of the terrible effects upon the industry of this Nation and the welfare of our people.

We are told that this race for expanded membership goes on while the bids for political power on the part of labor leaders continue to go higher and higher, while economic questions are made the footballs of political battles for personal power and aggrandizement.

Again we are told that general world conditions are responsible for the dire state of affairs which is resulting in adding thousands to the public relief rolls, while the gaunt and fearsome specter of a new depression, a new industrial and social turmoil, stalks this land.

It is true, Mr. Chairman, that we have in this Nation a minority who would, if they could, overthrow this Government and set up the intolerances and the brutalities of a Nazi rule. We have in this Nation a minority who would cast down our Republic, destroy our Constitution, and set up the intolerances and brutalities of a fascistic rule. We have in this Nation, Mr. Chairman, a minority who would set up the so-called communism of Russia, and who would compel us to live under the intolerable conditions of economic and social slavery, to grope our bewildered way through life under the deadening fear of the "purge" and "liquidation" if we offended those dictators who would rule in the name of the people with the weapons of terrorism and death.

We have in this country, Mr. Chairman, a minority who would carry this Nation to the very edge of the bloody abyss of revolution in order to profit themselves, to gain power for themselves, to perpetuate themselves in that profit and that power through political spoils and by arraying the masses against the classes and classes against classes.

We have in this country a minority who, because of sheer selfish desire to have great economic power through control of finance and industry, are willing to risk the wrath of an outraged people.

But, Mr. Chairman, it is my deep conviction that all of these blind, stupid, selfish, and utterly dangerous minorities added together do not equal more than a very small part of the people of this country. By far the greater percentage of our people comprehend and demand enlightened self-government. Given the truth of conditions and situations free from coloration, distortion, prejudice, and false interpretations, our people, of all the peoples of the world, Mr. Chairman, are the most capable of judging wisely and of demanding from their Government fair, just, and well-balanced constitutional democratic administration.

The dangerous aspect of this whole national situation is that for 5 years and more this Nation has been bewildered, confused, swayed, and shaken by conflicting campaigns and conflicting propaganda conducted for selfish and dangerous purposes by these small but very vocal minorities, in which classes have been inflamed and arrayed against each other. For 5 years and more incrimination and recrimination have been the weapons of political strife; accusation and counter accusation have been the modes of industrial and social disorder and warfare. And all to what end, Mr. Chairman? Why, sir, all to the end that the dawn of 1938 finds us again in a business recession, with many millions of our citizens facing the awful fear of privation, hardship, malnutrition, and, perhaps, ultimate revolution and disorder.

What have we gained by this factional warfare? What have any or all of these minorities gained by this sort of thing? Who can escape in this Nation, who can flee from the awful effects of social disruption, of economic wreckage, of revolution, of destruction of human liberties through destruction of constitutional government, if these things should come to pass? None of us could escape. We would all share the same fate. The financier, the industrialist, the property owner, all would suffer the loss of everything along with the worker and the ordinary householder.

There is no such thing as financial security or social security in this country for any man, any group, or any class, regardless of wealth or power, with a third or a half of our citizens unemployed, hungry, sullen, and desperate. To cover these facts under a cloak of false optimism and wishful thinking is a terribly dangerous thing to do. To ignore the plain peril of this condition is to invite its worst effects. To

be afraid to face facts and courageously to study their causes and to then move to eliminate or to remedy those causes is the most dangerous form of cowardice that could be indulged in at this time.

The results of the recent unemployment census have come to us with a dreadful shock. To allow this situation to drift while we revile and accuse each other means simply to go on to chaos and disorder.

To conceal the fact that another plague of unemployment is spreading over the Nation is neither courageous nor wise. To insist that these facts be covered deep under a veneer of false assurance and false security is to guarantee that they will continue to fester and to inflame until the whole foundation of national economic and social health is destroyed and a final collapse occurs.

The measures needed today, Mr. Chairman, are not concealment of these ugly and dangerous conditions from the people. The action that will instil the confidence needed in this country is a frank recognition of the situation, a cessation of factional and political bickering and quarreling, and the assembling of the financial, industrial, agricultural, labor, political, religious, and educational leaders of this country in a council of minds and a pooling of energies to avert disaster and to pull the ship of state back from the reefs and breakers of further recession and unemployment.

In the words of the immortal Thomas Jefferson—

> I hope * * * the good sense and patriotism of the friends of free government of every shade will spare us the painful, the deplorable spectacle of brethren sacrificing to small passions the great, the immortal, and immutable rights of men.

Mr. McCORMACK. Mr. Chairman, will the gentleman yield at that point?

Mr. COX. Yes.

Mr. McCORMACK. The gentleman will also concede that a reawakening, particularly in spiritual values, would be of great importance.

Mr. COX. Yes. I thank the gentleman for his suggestion.

When the rank and file of the citizens of this country are convinced that politics have been laid aside, that group and class selfishness have given way to a united effort by leaders of all classes to remedy this condition of affairs, you will find the rank and file of the citizenry ready to help, to follow directions, to meet bravely and effectively any problem.

To throw this Nation into a foreign war, as has been furtively suggested by a few here and there, is not the answer to the problem. That would make matters vastly worse than they are now. No such false prosperity can bring any lasting good, and I for one doubt that constitutional government in this country could survive the aftermath of another general war.

The danger that must be avoided now, Mr. Chairman, is that in the confusion of this new threat to the prosperity of the Nation, in the distraction of these new economic dislocations, these small minorities may be able by chanting hymns of hate, by stirring up false prejudices, and by inflaming a misinformed and deluded public opinion to arraign class against class and thereby aggravate the very conditions which are in part responsible for the present recession.

What we must do is to follow a course of sanity and common sense, a course of harmonious cooperation in a common effort, without regard to party lines, class lines, religious or racial lines, to rescue ourselves from the uncertain and dangerous economic conditions which overshadow the security of our citizens.

It is a dangerous thing, Mr. Chairman, for any individual or any group of individuals to play with the public temper, to trifle with the public confidence, to try to manipulate the public wrath for selfish purposes. Whoever does such a thing is gambling with the peril of a nation and with the welfare and the happiness of 130,000,000 men, women, and children.

Unless we face the stern realities, unless we stamp out this trend toward separating our citizens by class hatreds and class suspicions we may find the forces of prejudice and hatred getting out of hand and a public hysteria of fear operating beyond our control to the end that the utter ruin of our economic and our social structure, our very Government itself, may result.

Because of that danger, I conceive it to be the duty of every citizen who loves his country and who perceives this grave threat to our national welfare to speak out fearlessly.

Mr. Chairman, it has been asserted that a minority of financial and industrial leaders have deliberately brought on this business recession for their own selfish ends.

To assert that the power of this Government can be set at complete defiance and that all the efforts of the administration can be rendered futile and innocuous by any little group of plotters, aristocratic or otherwise, is to assert that constitutional government is a weak, futile failure, that the will of a hundred and thirty million citizens is as nothing, that the power of right, of truth, of justice, of the law, and of organized civilized society is utterly impotent. I, for one, refuse to accept any such doctrine of defeatism. I do not believe any such thing.

The fact of the matter is, Mr. Chairman, that this present recession is a recurrence of the earlier depression. Over the years during and following the World War we exported to other countries from this country purchasing power to the amount of some $29,000,000,000. That money, or the greater portion of it, went into foreign buildings, foreign factories, foreign highways, foreign bridges, and foreign armaments. It went to pay foreign workmen and it went in profits to foreign exploiters of American credit. That purchasing power was exported under the mistaken belief that it would be spent in America, that we would get it all back again in trade, and that following that, over the years, the principal would be repaid to us with interest. Instead of that neither principal nor interest have been repaid. With the money we loaned them, foreign countries set up factories, they hired American engineers, and they learned how to manufacture for themselves and for each other many of the commodities which formerly they bought from us. So we lost the money, we tossed away that purchasing power, and we lost to a great extent the foreign markets which formerly were dependent upon American industry and American workers for goods.

The economic anemia produced by those unwise foreign loans and investments resulted finally in the 1929 collapse because, added to that purchasing power exported to foreign shores, America went on a gambling spree. Artificial speculative values drained money from legitimate business and resulted in maldistribution of the purchasing power of this country.

When the final collapse came in 1929, something had to be done. Franklin D. Roosevelt had the courage to meet the situation with daring; to advocate measures designed to save us in the emergency. He rallied the public confidence and reawakened the national courage and the will to fight—and we avoided what might easily have been the complete collapse of our entire governmental, economic, and social structure.

But our prosperity from 1933 on up to the present time has been to some extent an artificial prosperity. We were financing it by borrowed credit which must be paid back. We were indulging in a stimulant that was dangerous, because we were suffering from the loss of all that economic blood we had exported to foreign shores and which was not returned to us.

Many of us, Mr. Chairman, have been trying to warn the country for the last 3 years that this artificial stimulation by injections of borrowed credit into the blood stream of commerce and industry must be curtailed as rapidly as possible before the time came when a greatly unbalanced Budget would force a sudden cessation that might leave the Nation in as bad a condition as it was before.

Let me address myself to the question of what we are going to do about this situation. Let me ask whether we are going to expend our energies in accusing one another of responsibility for the condition of affairs, and drift on to economic ruin while we engage in a prolonged and bitter argument and a dangerous campaign of arousing class prejudices and class hatreds and class suspicions to the point where they

may get out of hand and become a menace to our whole social structure and to our very Government itself; or whether we are going to calmly, sensibly, fairly, and honestly sit down and counsel together, ascertain just how to overcome the causes for this new recession, and then all work together as Americans to eliminate those causes and to restore a condition of prosperity and security.

I insist that if this problem is to be solved it will be solved by the political leaders, the financial leaders, the industrial leaders, the agricultural leaders, the labor leaders, the religious leaders, and the educational leaders of this country directing their best thought and energy to a cooperative effort to avert further recession regardless of any personal prejudices or suspicions, regardless of any desires for personal or political aggrandizement, with the fact uppermost in mind that if disaster comes to this Nation it will ruin all of us alike, with not one escaping the consequences.

Let us get away from politics in this situation and look sober facts in the face. Whatever degree of actual prosperity or real recovery has been attained has been accomplished through the labor of millions of American working men and women, through the directive efforts of thousands of large- and small-business men, industrialists, and financiers; through the combined effort, work, and action of all the various factors in the industry and commerce of the entire Nation—all directed and aided by the Government. This recession was not made, nor was it planned by any small group. It has been brought on by a combination of factors, influences, and circumstances involving world conditions, mistakes in governmental policy, mistakes in business policy, mistakes in labor policy, and by fear of excessive governmental regulation and regimentation, greater and more burdensome taxation, increased costs of production, and increased prices.

Why do we not admit frankly that we have a recession due to a combination of circumstances and conditions and, instead of pointing the finger of accusation at some particular class or group, call the leaders of all classes into conference, bring about cooperation by all classes, determine the causes, so far as possible, for the recession, and begin at once courageously and honestly to eliminate those causes? Then, when that is done, if some group or class or some individuals refuse to cooperate, or if they refuse to help and seek to hinder, then let us name them out, and let us take whatever action that may be wise and just and necessary to compel their cooperation.

That there are some selfish and blind and reckless, power-lustful men in the financial and industrial groups there is no doubt. There are also selfish, blind, reckless, and power-lustful men in every other minority group, including political parties, labor organizations, and even religious organizations. Lust for power, desire for self-aggrandizement, love of money, recklessness, selfishness are not elements of environment or classes. They are elements of individual personalities and are to be found in all classes. But because there are men who would misuse the power of organized labor is no reason for condemning all organized labor and all labor organizations.

Because there are men in the Democratic and Republican Parties who would use political power for their own profit and aggrandizement is no reason for utterly condemning all Democrats and all Republicans as being stupid or reckless or greedy or power mad.

Just because there are some men in financial and industrial classes who have these dangerous and undesirable qualities of temperament is no reason to condemn all financial and business leaders as being enemies of the people and dangerous to the Republic.

If there be those in finance and in industry who are deliberately plotting the overthrow of this Government, or who have deliberately planned this recession, or whose methods are inimical to the public welfare, let them be specifically charged before the bar of public opinion with the crimes they have committed; let the account of their acts be detailed so the people may know who they are and exactly what they have done. Then, and only then, can the citizens and the Congress determine justly and wisely what new laws, if any, should be enacted to supplement statutes already on the books.

It has been said that there has been in this country of later years all too much of the philosophy of government that the majority has the right to suppress the minority and to denude it of all rights. Let me say, Mr. Chairman, that we all belong to some minority or other. When we accept in this Nation the philosophy that any minority may be deprived of its constitutional rights, that the individuals comprising any minority may be denied their rights of property, of petition to their Congress and their Government, of their right to present their side of any controversy to the public, of their rights in the courts, we will have accepted the grave risk that we ourselves will one day be the minority whose rights will be stripped from us.

Mr. Chairman, the President has said that the vast majority of the financiers and industrial leaders of this country are patriotic and earnest men. I believe this, and I believe that they are just as anxious to seek out and to render powerless any racketeers or "aristocratic anarchists" among their ranks as the rest of the citizens are. It is my firm conviction that the patriotic, earnest labor leaders of this country are just as anxious to seek out and render powerless those in their ranks who would reduce labor organization to a racket and who would produce chaos in industry to get the opportunity for self-enrichment and power, as are the rest of the citizens of this country.

We have arrived at a time when all but a very few individuals in finance and industry understand clearly that finance and industry cannot crush labor without killing finance and industry. And we have arrived at the time when the more enlightened labor leaders of this country realize that labor cannot crush finance and industry without crushing labor's chances to make a living as well.

We have arrived at a time in this country when by law organized labor has broader powers and more rights and greater ability to bargain collectively for just and fair conditions and wages than ever before in the history of this Nation, and labor is now amply able to take care of itself on that basis.

There are certain fundamental economic laws which underlie this whole situation that cannot be eliminated by any government, by any group of financiers and industrialists, nor by any labor organization.

Let me very briefly mention some of these fundamental economic laws which must be taken into consideration in any attempt to end this depression in America.

Production power is people plus machinery.

Consumption power is people plus purchasing power.

Every cost of production and distribution, including all wages, salaries, bonuses, dividends, interests, taxes, and profits must be recovered at the point of ultimate consumption—the retail counter—if business and industry are to survive and continue to function. Indeed, these elements establish price.

Production cannot survive without consumption. Consumption cannot be without production.

Any increase of taxation, any increase of wages and salaries, any decrease in hours of work which increase production costs must be reflected in price at the retail counter and that price must be paid, in the main, by the very workers whose wages are increased and whose hours are shortened. That in turn means that although an increase in wages means more dollars in the pay envelope it may not mean more abundant life because of increased prices. In fact, in many instances, real wages—the actual purchasing power of the wage dollar—are so lowered by increase of price that labor suffers a reduction in real wages instead of an increase as a result of unwise wage increases and shortening of hours.

On the other hand, if extortionate profits are included in the price then the same effect of reduced real wages is produced. Our task is to determine if undue and extortionate profits are being loaded onto price during the process of

production and distribution. If this is so, then we must determine in what lines and in what manner such extortionate profits are being loaded onto price and that extortion must be stopped.

I believe, Mr. Chairman, that the great majority of financial and industrial leaders and the great majority of businessmen generally realize clearly that since their employees are also their customers, the wages and the hours of workers must be adjusted to the proper economic levels if industry and business are to survive.

I believe that the great majority of the labor leaders and the agricultural leaders realize clearly that if wages are forced up to artificial and uneconomical levels and if hours are forced down to artificial and uneconomical levels that the wage earners will gain nothing but must suffer along with the employers.

It is not an impossible task to determine in what lines and who may be responsible for any undue and disproportionate profits being loaded onto price to the detriment of the Nation, the impoverishment of the wage earners and the continuance of the depression.

We must consider always that price, composed of all the elements which go to make it, is the measure of exchangeability of the farm dollar and the wage dollar and the salary dollar and the fixed income dollar for real wealth, which is composed of consumable goods and services.

If unwise taxation, regulation, disproportionate profits, or any other element can be shown to be forcing up price levels, then the relief of the consumer lies in eliminating those uneconomical elements and in bringing down prices to the proper level.

We must remember that real wage increases can be given labor and all the rest of the citizens more effectively in price decreases than in money income increases. So if industry and labor, business and agriculture, Government and political leaders will work together to expand production at constantly decreasing prices, we actually will be working to increase real wages and real incomes, which is the way to prosperity.

We have been told for a long time that certain groups of monopolists and industrial managers have been taking off extortionate profits. This is undoubtedly true, but we have not been told who they are in specific terms, nor have we been informed as to how much extortionate profit has been wrung from the helpless consumers.

I have said before in this Chamber, and I say again now, that it is a comparatively easy task to determine with a great degree of exactitude just where extortionate profits are being loaded onto the price structure, and by whom that iniquitous act is being perpetrated. Let us ascertain the facts and then let us act to end such evils by whatever legislation may be necessary, and I believe these evils can be controlled entirely within the terms and limitations of the Constitution. And I further believe that industrial, financial, and labor leaders all would welcome a purging of those interests and those individuals who perpetrate these evil and dangerous abuses just as soon as Congress by proper investigation determines who is responsible.

We must face the fact that if labor insists on the right to quit work when wages or conditions are unsatisfactory, industry and capital have, too, the right to quit work when conditions become dangerous or profits disappear. Unless we want to go on to the extremes of socialism and take over all industry in this country and attempt to operate it as we did our merchant marine for a time, then we must recognize that we have got to give finance and industry a voice along with labor in government, in determination of governmental policies, in taxation, and in the general conduct of our material affairs of life.

The situation today after 5 years of continual abuse and accusation of business is such that the average big business or financial leader of the country actually does not dare to try to do anything to help the situation; he dares not utter a word of warning against any mistaken policy because his motives are misunderstood and a flood of inspired propaganda is directed against him and the wrath of the citizens is aroused against him. That is a dangerous condition.

If the majority of the citizens, and especially the political and industrial and financial and labor leaders of this country, will do what sane, sensible, patriotic, and earnest men ought to do—get together and work for the common good, including their own—we will be in no danger of another major depression, nor will we be in any danger of the citizens of America trading their government and their liberty for "the delusion of a living."

We cannot stand another major depression. We do not need to stand another major depression, regardless of conditions throughout the rest of the world. If we build up our national defense adequately to protect ourselves against assaults by other nations, and if we maintain that fairness and honorable dealing in our foreign affairs that have always characterized the American motive and the American policy, we can go ahead toward our own internal security.

But if we separate the citizenry into classes, if we try to shear one class and one group after another of their rights, we then can expect only that when the confusion grows sufficiently great, when the fears of the various minorities become sufficiently aroused, some groups will try to seize the reins of government under the pretext that they will make the people economically and socially secure; and a revolution will then be the only way in which we can recover the lost rights and liberties of ourselves and our children.

In conclusion, Mr. Chairman, let me again use the words of Thomas Jefferson and say:

> My earnest prayers to all my friends (are) to cherish mutual good will, to promote harmony and conciliation, and above all things to let the love of our country soar above all minor passions.

[Applause.]

Mr. TABER. Mr. Chairman, I yield 15 minutes to the gentleman from Michigan [Mr. ENGEL].

Mr. ENGEL. Mr. Chairman, I desire this afternoon to discuss the question of 2-cent postage and postal deficits. In 1933 when the 3-cent postage was adopted, the people of the Nation were informed that it was a temporary measure, that we would return to the 2-cent postage as soon as the revenues of the Department justified it. I have examined the testimony and tables of revenues and expenditures placed in the hearings of the Committee on Appropriations by the Post Office Department. During the fiscal year ended June 30, 1933, which is the year during which the 3-cent postage was adopted, the audited revenues of the Post Office Department amounted to $587,631,364. These same tables placed in the record by the Post Office Department show that in 1938 the revenues will amount to $761,250,000, and that the revenues for the fiscal year ending June 30, 1939, which is the bill that we are now considering, will amount to $795,500,000. If we compare the revenues of 1938 with the revenues of 1933, we find that there has been an increase of $173,618,636. If we take the revenues for the fiscal year 1939, we will find there will be approximately $34,000,000 increase over 1938 or approximately $208,000,000 difference or increase in revenue between 1939 and revenues of the fiscal year ended June 30, 1933. When we examine the report further we find that in 1933 we paid in ship subsidies and air-mail subsidies the combined sum of $45,264,945. A part of the ship subsidy was transferred to the Maritime Commission and the air-mail subsidies were reduced due to increased air-mail revenue until we have today reduced the subsidy for the ocean-mail service and the air-mail service of $15,288,000. In other words, we have reduced the air- and ocean-mail subsidy in the Department by approximately $30,000,000. This sum added to the $173,000,000 increased revenue of 1938, will make a difference of $203,000,000. Again we find on that same table, page 6, that the transportation charges have decreased from $180,300,000 in 1933 to $153,000,000 in 1938, or approximately $27,000,000.

Taking the 1938 revenue figures we find an increased revenue of $173,600,000 over 1933. Add to this sum the $30,000,000 saving to the Department in ocean- and air-mail subsidy and approximately $27,000,000 saved in transportation

charges and we find we have taken in $173,600,000 more and paid out $57,000,000 less in 1938 on these items than in 1933. Added together, this would make a difference of $230,600,000. If we compare the 1939 figures with the 1933 figures, we would have to increase this difference to approximately $265,000,000 because of the increased revenue of 1939 over 1938. The Assistant Postmaster General testified that a return by the Post Office Department to the 2-cent postage would cost approximately $90,000,000. On this basis we could have returned to the 2-cent postage and have $175,000,000 left, and still we are told that the Post Office Department cannot go back to the 2-cent postage.

Mr. Chairman, the highest revenue taken in by the Post Office Department in the history of the Department was in 1930, when the revenue amounted to $705,000,000, including ocean- and air-mail subsidies.

Three-cent postage is continued and we have another postal deficit despite the fact that the Post Office Department took in $173,600,000 more revenue and paid out $57,000,000 less in air-mail subsidies and transportation charges in 1938 than in 1933, when the 3-cent postage was instituted as a temporary measure.

The revenues of the Post Office Department in 1938 exceeded the highest year in the history of the country by $56,000,000, and in 1939 will exceed that high mark by $90,000,000, and still we are informed we cannot go back to 2-cent postage. Mr. Chairman, in the face of these facts we find we still have a deficit. Call it postal or nonpostal deficit, a deficit nevertheless. Why, in the face of a $173,600,000 increase in postal revenues, are we still paying a 3-cent postage?

Last year the Postmaster General, in releasing the report of the Post Office Department for 1937, was quoted by the Associated Press as follows:

James A. Farley's Post Office Department was $88,316,234 in the red, but Farley hastened to explain yesterday that the mail of Congressmen and other nonpostal items were largely responsible.

As a matter of fact, congressional franking in 1937 was 2½ percent, and in 1938 was less than 3 percent of the total franking. This year the President blames the deficit to the fact that the Post Office Department is carrying, he claims, newspapers for less than cost and making free delivery of country papers within the county. The increased cost would necessarily fall upon the purchaser of the papers. Country papers recently increased the price of the newspapers because of the increased cost of newsprint. He would make the farmer pay more for his weekly and daily papers. We have always had a system whereby the first-class mail was required to absorb a part of the cost of the second- and third-class mail. I maintain there is just as much reason for the difference in the cost of carrying the different classes of mail as there is reason for the difference in charges made for carrying different classes of freight or express. You cannot expect a railroad or express company to carry a carload of coal and a carload of perishable fruit at the same rate. Quantity, quality, value, and additional service are all taken into consideration in fixing the rate in each case.

The only newspaper that is carried free is the little county weekly that go out to the farmers—at a cost of approximately $660,000 a year. Not one rural carrier would be discharged by making those little newspapers pay this carrying charge and there would in fact be no actual saving.

Mr. TABER. Mr. Chairman, will the gentleman yield for a question?

Mr. ENGEL. I yield.

Mr. TABER. How much does it cost the Department to carry the propaganda that is sent out in violation of law by all these Departments and agencies?

Mr. ENGEL. On March 22, 1937, I placed in the RECORD facts concerning departmental franking. I was told by the Post Office Department when I tried to get the figures for the fiscal year ended June 30, 1937, that it would amount to about the same number as were sent out in 1936, which would be approximately 669,000,000 pieces.

When the final record came out, I learned that the Department had sent out in 1937 742,487,000 pieces of mail weighing 96,000,000 pounds or approximately 73,000,000 pieces more than they had sent out the year before. Now let us examine the record and learn just why there is a deficit. The pay-roll figures show that in 1933 the Post Office Department paid in salaries $482,313,357. The same record shows that in 1938 the pay roll amounted to $594,350,115, or an increase of approximately $112,000,000. Testimony before the committee last year showed that the 40-hour week would cost approximately $35,000,000. Allowing this amount for the 40-hour week, we find that the increased pay roll of 1938 over 1933 amounts to $77,000,000.

Mr. HOFFMAN. Will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Michigan.

Mr. HOFFMAN. Is that on the theory that the poorer the remedy the greater the need for advertising?

Mr. ENGEL. I will permit the gentleman to make his own interpretation. However, I may say that these 73,000,000 additional pieces of mail were sent during a campaign year, by Departments.

I ask unanimous consent to revise and extend my own remarks in the RECORD and include therein three tables compiled by myself.

The CHAIRMAN (Mr. DRIVER). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. ENGEL. Mr. Chairman, these tables show the number of pieces of franked mail sent out by Departments and by Members of Congress each year for the years from 1930 to 1937, inclusive. They show the number of pounds and the amount of lost revenue. The figures are taken from the records of the Post Office Department. These Departments sent out during this 4-year period 2,566,504,407 pieces of free mail. It is rather difficult to understand or to realize the vastness of this amount. Let us assume, for the sake of argument, that we picked out the most expert postal clerk in the Postal Service and gave him the task of sorting and counting that mail. Let us assume that he worked 40 hours per week and 48 weeks per year and that he sorted and counted one piece every second. If that clerk had started counting and sorting that mail when Abraham Lincoln signed the emancipation proclamation, he would be counting and sorting yet. If that clerk had started sorting and counting that mail when George Washington crossed the Delaware, he would be counting and sorting yet. If that man counting one piece of mail every second and working incessantly 40 hours a week, 48 weeks a year, had started when the Pilgrim Fathers landed on Plymouth Rock 300 years ago, he would be counting yet. If he did not take sick leave, he might finish it in the year 2042. All this mail that would take a man more than 300 years to count was sent out by the departments of Government free of charge and at the expense of the taxpayers of the Nation in 4 short years.

The mail these departments have sent out in 4 short years weighed 353,991,329 pounds. It would have taken 140 railroad engines hauling 50 cars each, with 50,000 pounds capacity to each car, to haul this mail out of Washington if it were hauled out at one time. This amounted to 55 pieces of mail weighing 8 pounds for every one of the 45,000,000 voters who cast their vote in the last election. Then we talk about the newspapers. We talk about the poor little country press that is trying to tell the farmer that his neighbor's cow died; and we blame it for the deficit.

Mrs. ROGERS of Massachusetts. Will the gentleman yield?

Mr. ENGEL. I yield to the gentlewoman from Massachusetts.

Mrs. ROGERS of Massachusetts. I think Mr. Farley in his report spoke of the cost of congressional franking and other franking. This is the other franking?

Mr. ENGEL. This is the departmental franking only. The congressional franking amounted to between 2½ and 3 percent of the total.

Mr. WOODRUFF. Will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Michigan.

Mr. WOODRUFF. The gentleman states this is departmental franking?

Mr. ENGEL. Excluding the Post Office Department.

Mr. WOODRUFF. Does the gentleman have any figures showing the increase in departmental or bureaucratic franking during the last 5 years?

Mr. ENGEL. I will put the figures into the RECORD, year by year, from 1930 to 1937. This will include 4 years preceding 1933 under the last Republican administration.

The Post Office Department does not include its own franking, and properly so, because franking of the Post Department is a legitimate charge against that Department.

[Here the gavel fell.]

Mr. DITTER. Mr. Chairman, I yield the gentleman from Michigan [Mr. ENGEL] 5 additional minutes.

Mr. ENGEL. Mr. Chairman, the mail sent out in the last 4 years by these Departments amounted each year to 641,626,102 pieces, or 88,500,000 pounds, or 2,103,700 pieces weighing 98,937 pounds per day. We lost in revenue due to this franking of the Departments the staggering total of $120,694,678.

Mr. HOFFMAN. Will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Michigan.

Mr. HOFFMAN. Did I understand the gentleman to say that it took 8 pounds of printed matter to get each Democratic vote?

Mr. ENGEL. I said that the total amount of franked mail sent out by the Departments amounted to 55 pieces of free mail weighing 8 pounds each for each one of the 45,000,000 people who cast their vote in the last election, and Mr. Farley said the lost revenue amounted to $120,694,678.

This does not tell the whole story. We had to pay for the paper. We had to pay for the printing of this 354,000,000 pounds of mail. I sent to the Printing Office and got the average cost per pound of paper and the average cost of printing per pound. I do not know any other way to figure it. If you know a better way, figure it out. I found that the cost of the 353,991,000 pounds of paper, at $0.0695 per pound, amounted to $24,602,397. The cost of printing at 21 cents a pound, average cost per pound at the Printing Office, amounted to $75,506,350 more. In other words, the franked mail of the Departments cost us in lost revenue, in paper, and cost of printing, a total of $220,803,425, or an annual cost of $56,201,160, or nearly $181,000 for every working day in the year.

Mr. WOODRUFF. Mr. Chairman, will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Michigan.

Mr. WOODRUFF. Has the gentleman compiled figures showing the amount of money it has cost the Government for the preparation of all this propaganda they have been sending out?

Mr. ENGEL. There is no way to determine the cost of preparation, nor of writing, nor the cost of the overhead. I am just taking the cost of the actual printing, the cost of the paper, and the lost revenue.

Mr. WOODRUFF. The gentleman has no knowledge of the cost of the stenographic work?

Mr. ENGEL. None at all.

Mr. WOODRUFF. Or the cost of the typing or other clerical work which is necessary in the preparation of this material?

Mr. ENGEL. No; I have not.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from California.

Mr. SCOTT. Would the gentleman recommend the Departments stop printing this material and stop sending it out, or would the gentleman divide what they are printing and sending out into good and bad categories; some he would eliminate and some he would keep?

Mr. ENGEL. All I can tell the gentleman is this: Allowing this Democratic administration 100 percent increase over the last Republican administration, it leaves $75,000,000 as the cost of political propaganda you have sent out in the last 4 years. This is 10 times as much as the Republican national campaign committee spent last year. In the face of these facts it is amazing and surprising that the Republican Party was able to carry even Maine and Vermont.

Mr. SCOTT. Look at the improvement in the Government since those days.

Mr. ENGEL. Yes; improvement in the increased cost of government and improvement in increased waste. This $75,000,000 of political propaganda cost the taxpayers $3 for every Democratic vote cast in the last election.

Mr. HOFFMAN. Mr. Chairman, will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Michigan.

Mr. HOFFMAN. Did it cost them $75,000,000 additional to tell about the Hoover depression? Did the people not know of it without their spending this $75,000,000 on printing?

Mr. KNUTSON. Mr. Chairman, will the gentleman yield?

Mr. ENGEL. I yield to the gentleman from Minnesota.

Mr. KNUTSON. I understand enough Jackson Day dinner mail has gone through in the last 3 or 4 weeks that they are going to wipe out a very considerable part of the deficit. The tickets were priced at $50 and $100, and they all went out by registered mail. It was a highly profitable business for the Post Office Department.

Mr. ENGEL. I have listened to many Democratic speeches during the last 2 years. I listened many times over the radio to the wonderful praise given and the glowing tributes paid James A. Farley at several $100-a-plate banquets. Much was said about the wonderful leadership of James A. Farley, chairman in the last campaign. I listened carefully but in vain to hear one word of praise for this wonderful contribution of $75,000,000 worth of political propaganda contributed by Postmaster General James A. Farley at public expense to Chairman James A. Farley of the Democratic National Committee.

TABLE I.—*Franked mail sent by departments (exclusive of Post Office Department)*

FOR FISCAL YEARS ENDING JUNE 30, 1934, 1935, 1936, AND 1937

(Present administration)

Year	Number of pieces	Weight (pounds)	Lost revenue
1934	530,471,016	81,212,639	$23,094,882
1935	624,194,119	85,207,595	31,281,600
1936	669,352,068	91,125,145	32,236,269
1937	742,487,204	96,445,950	34,081,927
Total	2,566,504,407	353,991,329	120,694,678
Yearly average	641,626,102	88,497,832	30,173,670
Daily average	2,103,700	290,150	98,937

FOR FISCAL YEARS ENDING JUNE 30, 1930, 1931, 1932, AND 1933

(Last administration)

1930	302,126,259	42,737,534	$99,347,505
1931	353,795,225	43,342,958	9,886,456
1932	319,890,040	43,118,907	9,151,899
1933	373,440,968	43,326,622	14,315,414
Total	1,349,252,492	172,526,021	42,701,274
Yearly average	339,750,830	43,131,503	10,675,319

TABLE II.—*Franked congressional mail*

Year	Number of pieces	Weight (pounds)	Lost revenue
1930	34,525,581	3,978,879	$718,060
1931	33,413,032	4,385,007	723,671
1932	38,551,744	4,418,216	778,436
1933	36,171,088	6,867,788	1,019,621
1934	20,882,779	7,724,910	775,785
1935	16,097,050	2,683,086	577,162
1936	42,908,983	5,993,694	1,137,440

TABLE III.—*Departmental franking, not including Post Office Department—Lost revenue plus cost of paper and printing for period from July 1, 1933, to July 1, 1937*

Lost revenue	$120,694,678
Cost of 353,991,329 pounds of paper at 0.0695 cent per pound	24,602,397
Cost of printing 353,991,329 pounds of paper at 0.2133 cent per pound	75,506,350
Total lost revenue and cost of franking from July 1, 1933, to July 1, 1937	220,803,425
Annual cost	55,201,106
Daily cost	180,987

[Here the gavel fell.]

Mr. DITTER. Mr. Chairman, I yield 15 minutes to the gentleman from Ohio [Mr. JENKINS].

Mr. JENKINS of Ohio. Mr. Chairman, I appreciate the generosity of the gentleman in allowing me this much time, but I do not expect to consume it all.

I had selected what I had thought would be a very interestinb subject for discussion today, the work, the performances, and the responsibilities of the Bituminous Coal Commission, but I have not been able to get together figures as interesting and as probative as those of my distinguished friend the gentleman from Michigan, who has just spoken so interestingly.

Mr. KNUTSON. Did the gentleman say "vituperous" or "bituminous"?

Mr. JENKINS of Ohio. I said "bituminous." If the gentleman is not familiar with this word I will suggest that he brush up on his vocabulary.

We all know that the press has frequently found it easy to condemn the Bituminous Coal Commission during the last 3 or 4 months. While I agree with the press in many respects in that regard, I do not want to appear here altogether as an apostle of calamity and criticism in respect of the doings of the Bituminous Coal Commission. As one who is a friend of the objectives of this Commission, I may say the Commission has had a real test to administer this law.

I should have liked today to have brought to you a description of the result of the work of this Commission. Many Members of the House during the consideration of the bill which established this Commission asked me, "What about the price of coal, will the price be increased?" This question is the one that I should have liked to have answered today, but I cannot do it because, as I have already stated, it is impossible to get the figures. I have tried every available source that I might be able to furnish them, and enable me to bring enlightenment to the House on this one subject. I believe it would permit us to engage in a profitable discussion because very many people are interested in this one proposition.

The Commission in a way has been remiss and has kept us from having these facts. For this the Commission should be criticized. The Commission at first permitted itself to be used by political influences until it had come to the place where its work was held up to public criticism to such an extent that it was fast becoming a stench in the nostrils of the people of the country. The Commission has been compelled by one ulterior influence or another to employ at least twice as many people as needed. There was no special reason why they should have been compelled to employ this extra army except that the pressure was great and that their own weakness invited this imposition. By their weakness they have brought unpopular attention to an industry that needs favorable attention. They made it impossible for us who are friends of this industry and this plan for its relief to be enthusiastic about this work.

On the other hand, we were forced to acknowledge that from all appearances a noble legislative experiment was about to fail because of incompetent administration of the law.

Mr. TREADWAY. Mr. Chairman, will the gentleman yield?

Mr. JENKINS of Ohio. I yield to the gentleman from Massachusetts.

Mr. TREADWAY. Is not an explanation quite evident with respect to the type of pressure that has been brought to bear on the Commission, and to which the gentleman is referring? The gentleman is rather careful in the use of his words, but I believe the gentleman knows pretty well what that pressure is, and I believe it would be perfectly fair and proper that he tell us.

Mr. JENKINS of Ohio. I think a glance at the places from which the personnel comes will indicate where the pressure comes from. The last public statement I saw in the newspapers, although I could not get the information myself, indicated there were 980 people employed in the Commission. I understand that there are about 1,250 now.

Mr. TREADWAY. May I ask there whether any of them are civil-service employees?

Mr. JENKINS of Ohio. I will answer that in just a moment.

These figures—the 980—were broken down with respect to the different States, and three States had almost one-half of the personnel. These States were West Virginia, Pennsylvania, and Kentucky.

A short time ago an article appeared in one of the papers in which three members of the Commission, to the discredit of the other four members, were made to appear as the master minds of the Commission. These three master minds happen to be residents of the three States which were awarded with so many appointments. Of course, that may have been a mere coincidence, but to the average man it is clear proof that the placing of employees to carry on the work was not fair or lawful. The action of the master minds is only an index of the appraisement that they themselves gave to their responsible positions. They should not have engaged their valuable time in the petty game which only brought unfavorable comment on the Commission, which had the responsibility of bringing relief to a distressed industry. With respect to how many employees are under civil service, I may say that, being interested in the subject, I addressed a letter to the Coal Commission asking them to furnish me with information with reference to how many people were employed, how many were under civil service, how many were not under civil service. They refused to answer the inquiry, which seemed to me to be a very simple inquiry. Their refusal cannot be justified except in the thought that they were not anxious for anybody to have this information.

Since that time I have found out that at one time there were 250 people here in Washington on the Government pay roll doing nothing; they were drawing big salaries with nothing to do. I understood that the Civil Service Commission indicated it was about to make an investigation, and when the Commission received this information one of the members of the Commission immediately got busy and these 250 employees were sent out of Washington as soon as possible, about 100 being sent to one place and about an equal number being sent to another place. I understand now there are two places in the country where there are about 100 employees in each place when 10 or 15 would be sufficient. This is a gross mismanagement and reflects itself against the coal industry, which I am so anxious to see put on its feet again.

This may answer the gentleman's inquiry; and I may say further that the turmoil created by the press and the facts themselves have been so pronounced and so uncomplimentary to some members of the Commission that the President himself has taken note of it. The Commission appeared before him; and I may say that since that time there seems to have been a change in the conduct of these master minds on the Commission as far as loading down the pay roll is concerned. Last week, or perhaps 2 weeks ago, the Commission engaged a civil-service expert who has gone to work on this problem, and I was reliably informed a day or two ago that 50 useless employees had been discharged this week and that this expert is going down the line as fast as he can. I hope that his work may be swift and thorough. I am also advised that in some places it was found that a clerk would be working for $1,440 a year and another clerk would be working beside him making as much as $4,200 a year. This inefficiency of management leads to suspicion that there was more than mere inefficiency involved.

This is the condition that has brought this Commission to a low ebb in the estimation of the people.

Mr. TREADWAY. I realize the gentleman is choosing his words carefully; but is it not perfectly apparent to the gentleman that this is purely a political situation in the three States where worthy Democrats, I assume, are getting the benefit of standing in with these Commissioners? Let us be frank and open in our language.

Mr. JENKINS of Ohio. I would answer the gentleman in this way. I want to be careful in my language. I am not primarily interested in finding fault with the Commission, only as it reflects on the efficiency of their work. I think

there is no question but that politics is to blame, because here is the situation: There was a time when these three Commissioners, who had held themselves out as being the brains of the whole organization, were scarcely on speaking terms with other members of the Commission; and I understand this situation as to the number of employees and their salaries was not known to certain other members of the Commission. This job of administering this law is big enough to require the best ability of these men and they should not have wasted their time in bickerings.

As far as I have been able to learn, the personnel itself may probably have been as good as the average personnel. I know nothing about that. As to the 250 employees who were scattered around over the country to escape the civil-service investigation, I would not say they were incompetent, I would not say they were dishonest or unfaithful, and I would not even say they were all Republicans or all Democrats, because I do not know. I am willing to assume they were fine men and women and men and women of great capacity. My complaint again is that the industry needs help, not criticism. In this connection I may say that I stood on this floor and made a battle for the coal industry of my State, for the coal producers and the coal miners, and we set up this Commission. The bill went to the Supreme Court once and was declared unconstitutional, and those who were in favor of this project stayed up at night, as it were, to study this proposition and to evolve a plan that would be constitutional, and they were all keyed up with the hope that this would be an efficient administrative body. We are keenly disappointed, and we have a right to be. It is going to take the best acumen that any and all of these Commissioners possess to administer this bill satisfactorily, because it opens up a new field and is an experiment. I want to see it succeed. If certain members of this Commission cannot free themselves from pernicious political influence, they should resign.

The industry and those engaged in the industry have suffered a severe set-back. My State, for instance, is a great coal-producing State, and whereas in Kentucky, as the figures show, they have 110 people to administer the law, in my State they have only 23 to do the work. Manifestly there are too many in Kentucky or too few in Ohio, or both.

While I am on my feet I may say that some of the 23 have been inflicted upon our people under circumstances that ought to be investigated, and I understand that the circumstances are going to be investigated. This should be done. These barnacles should be removed. It is currently reported that one of these employees in a high place was discharged by the Secretary of the Treasury from previous employment in that Department.

One discharged from a place of responsibility should not be elevated to another place simply because he happened to have been an active political worker for an important official. At least, some inquiry should have been made as to his knowledge of the coal industry.

I am glad to say that the Commission now is showing some signs of wanting to do the right thing for those from whom information has been held back, and are, I understand now getting some information. I hope this is not altogether because it appears that investigations are about to be made in the Senate. We have failed to get an investigation in the House. My good friend, the gentleman from California [Mr. SCOTT], attempted to have an investigation in the House, but failed. I, too, have attempted to have an investigation, but I have failed also. I got my resolution in shape for reference to the Ways and Means Committee, which should have made this investigation, for this committee wrote this law. Our rules in the House do not permit investigations as readily as the rules of the Senate. I hope that the Senate makes a thorough investigation, for it will be for the best interests of the industry and of the Commission.

I asked for this time in the hope that I could bring hope to the coal industry and the miners that our experiment is not a total failure, that it has not been lost, and that it is not in the discard; that we are going to see the light of day, and that a depleted industry shall again be placed upon its feet. If a disposition on the part of the Commission or any of its personnel to continue to thwart the orderly progress of the administration of this law is manifest, I am sure that those of us who wish to see it have a fair chance shall become vocal again.

Mr. SHANNON. I understand the gentleman is not ready to generalize on prices yet.

Mr. JENKINS of Ohio. I am now ready to discuss that. I made inquiry in four large cities and have replies back from two of them. They indicate that the increase in the price of coal has been negligible since the scales of coal prices has been set up by the Commission. One reports that he cannot get the figures and the fourth I have had no report from. I have made inquiries here of the Consumers' Counsel and he has no figures. It is too early, it seems, to get reliable figures.

Mr. TREADWAY. I understood the gentleman to say that he rather favored three out of the seven members of the Commission. That is, he thought that they were good members.

Mr. JENKINS of Ohio. I would not want the gentleman to imply from my words that I have said that any of them were not good.

Mr. TREADWAY. The gentleman thought that three were better than the other four?

Mr. JENKINS of Ohio. I maintain this position. I understand that four members, a majority of the Commission, had their own star-chamber sessions and refused to divulge information to the other three, with the result that the Commission was divided against itself when entering on an important study or program. Frequently the matter under consideration would have been a real challenge to all of them if they had been always earnest and harmonious. A house divided against itself in that kind of a task cannot stand.

Mr. TREADWAY. I realize that situation, and that leads me to ask the gentleman whether there had been any change in the personnel of the Commission.

Mr. JENKINS of Ohio. No; the personnel has not changed, but I understand that the heart of the personnel has been changed around by the President himself in a marked way, and I compliment the President for that. One member of the Commission offered to resign several times, according to press reports. I think his resignation would have been accepted if written out and properly presented.

Mr. SCOTT. Does not the gentleman mean that four of them had arrogated to themselves the position of directing directors and more or less ignored the other three.

Mr. JENKINS of Ohio. I understand that that was the situation.

Mr. SCOTT. And things have been said about it, and criticism has been started, and they have been a little better than they were before.

Mr. JENKINS of Ohio. Yes, I think this is one instance where criticism and publicity had a very salutary effect.

Mr. SAUTHOFF. Mr. Chairman, will the gentleman yield?

Mr. JENKINS of Ohio. Yes.

Mr. SAUTHOFF. Does the gentleman and some of his colleagues from the coal-mining districts consider the advisability of cutting it down to three members of even one director?

Mr. JENKINS of Ohio. I do not know that that has ever been considered. I think personally that this Commission set up as it was, of two members from the producing industry, two from the miners, and three selected by the President, would have been a pretty fair set-up, but probably five would have done just as well as seven. I would not at this time like to see it in the hands of only one. Probably when it is thoroughly organized and functioning smoothly it might be operated by one commissioner. At present there are many problems that cannot be decided by a board.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. DITTER. Mr. Chairman, I yield the gentleman 1 minute more.

Mr. RAYBURN. Mr. Chairman, will the gentleman yield?

Mr. JENKINS of Ohio. Yes; I gladly yield to my friend the distinguished majority leader.

Mr. RAYBURN. The gentleman from Ohio does not, however, want to be put in the position as indicated by the gentleman from Massachusetts [Mr. TREADWAY] that only the non-Democratic members on the Commission are good men.

Mr. JENKINS of Ohio. As a matter of fact, I would say to the gentleman that I do not know what the political complexion of the membership of the Commission is, but, of course, in a colloquy between the gentleman and myself, I would have to maintain that the Republicans were equally as good as the Democrats, but that is neither here nor there.

Mr. CLASON. Mr. Chairman, will the gentleman kindly explain how it is there were four of them running the place and that only three of them got 100 employees over there?

Mr. JENKINS of Ohio. I cannot answer that, except to say, as I said in the beginning, there must have been strong political pressure or weak resistance, or both. [Applause.]

The CHAIRMAN. The time of the gentleman from Ohio has again expired.

Mr. LUDLOW. Mr. Chairman, I yield 20 minutes to the gentleman from Ohio [Mr. HARLAN].

Mr. HARLAN. Mr. Chairman, last Monday the gentleman from Massachusetts [Mr. TREADWAY] addressed the House upon the proposed reciprocity treaty with Great Britain. I wish to take that speech and the colloquy that occurred more or less as a basis for this discussion this afternoon. He proposed fundamentally that the allowance for the Tariff Commission be reduced, inasmuch as the amount of work was being reduced, because they were not effectively protecting our tariff laws, or words to that effect. He said:

> I wish to call attention to the RECORD of last Saturday wherein there is listed in fine print nine and a half pages of articles on which this country will consider granting concessions to the United Kingdom.

Mr. Chairman, had the gentleman looked at the notice that was sent out by the State Department concerning this proposed treaty he would have found just as many articles of American export into the United Kingdom that were being considered by England to give concessions to us; in fact, in this interchange of reciprocal concessions it is almost impossible for the United States to lose, for the reason that our exports to Great Britain amount to $440,000,000 a year on which concessions are to be made, and our imports from Great Britain amount to only $200,000,000 a year. It is almost a physical impossibility for men of reasonable brains in discussing a subject of that kind not to come to a fair basis favorable to both countries and certainly favorable to us. We should also remember that while 400 items of imports from the United Kingdom are scheduled, eight times that number are actually imported from the United Kingdom to this country. In short, the proposed treaty is not so comprehensive as Mr. TREADWAY would lead us to believe.

The Tariff Commission, far from reducing its activities with these reciprocal-trade agreements, is increasing its activities very, very much. There are three groups of people interested in our foreign trade; first, the man who manufactures for local consumption; second, the manufacturer for export; third, the consumer. Under our old method of writing tariff treaties and tariff schedules in the Ways and Means Committee only one of these groups ever got a hearing, and that was the man who manufactured solely for local consumption. He would file a complaint that he could not manufacture at existing costs and thus get a rate raise. The man who was manufacturing for export got no opportunity to present his case, because he did not know when anything was coming before the Ways and Means Committee that would affect him. The exporter, for example, might manufacture automobiles. The maker of wine in this country would ask for a duty on wines. The wine merchant would have a hearing, but not the automobile exporter because he would not know that a duty on wines would affect his exporting automobiles to France; or, as happened specifically, radio manufacturers in that particular case who were very seriously hurt. They had no forum under our old arrangements wherein they could present their claims.

In the system that the State Department has inaugurated here, announcements are sent out not only in respect of those things that are being imported into this country, but announcements are sent out also affecting those things being exported from the country. Thus the manufacturer for export now has a forum in which to present his case, something he never had before. Because of this the duties of the Tariff Commission have been multiplied.

The gentleman in his speech said that these imports from England were going to ruin our industries, destroy the industries of this country. General statements of that kind can, of course, easily be made, but they are not borne out by the facts.

Mr. BATES. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. Not now; I will later, if I can.

Let us take the item that has been used mostly in this kind of argument, cheese—I see the gentleman from Wisconsin in front of me—Cheddar cheese. In 1932 the Cheddar cheese merchants had practically 100 percent of the market in this country and got an income of $37,000,000 a year and a price of 10 cents a pound. In 1936 they had only about 98 percent of the market, due to 2 percent imports; but they were getting 15 cents a pound and an income of $75,000,000 a year. There is no instance, Mr. Chairman, that the record will bear out that increased imports have ever injured our country.

Mr. BOILEAU. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I yield.

Mr. BOILEAU. In making his comparisons the gentleman certainly does not want to compare depression years with years when commodity prices all along the line increased. Certainly imports did not help us any, did they?

Mr. HARLAN. I think the importation of cheese along with the importation of other commodities did most certainly help us.

Mr. BOILEAU. The price of cheese increased more in proportion than the price level of other commodities.

Mr. HARLAN. I cannot tell the gentleman offhand.

Mr. BOILEAU. After all, that is essential if such an argument is to be used.

Mr. BATES. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I cannot yield further at the present time.

Mr. SAUTHOFF. The gentleman should give us a chance to correct him, because he is wrong.

Mr. HARLAN. I am sorry, I cannot yield. The gentleman may do it in his own time.

Mr. BATES. The gentleman asked to be shown; we will show him.

The CHAIRMAN. The gentleman from Ohio refuses to yield.

Mr. HARLAN. The record of imports into the United States shows that in periods of prosperity we have always had very large imports, and in periods of depression we have not had such large imports. Now let me give you just one example, and you can duplicate this by any number. I cited Cheddar cheese a moment ago.

Let us now take shoes. In 1929 we imported 5,700,000 pairs. In 1932 we imported 1,289,000 pairs. We are now getting back to a basis of reasonable prosperity, and the number of pairs imported has increased to 1,800,000.

Mr. BATES. Mr. Chairman, will the gentleman yield on that particular product so that I may answer him?

Mr. HARLAN. I cannot yield; I have stated that I cannot yield.

The CHAIRMAN. The gentleman refuses to yield.

Mr. HARLAN. We can very easily stop imports into this country by simply having depression years; that is the best way to do it; but if we are going to increase prices in times of prosperity we are going to have imports. At the same time, however, we are going to have exports. For example, in 1929 our exports amounted to $5,000,000,000 a year. That was reduced in 1933 to $1,500,000,000.

At the same time our imports increased proportionately. If imports were such an injury to this country, why is it that in times of prosperity the imports always go up?

Mr. BATES. Will the gentleman yield? I will answer the question if he will yield.

Mr. HARLAN. You would expect, Mr. Chairman, that imports would decrease in periods of prosperity if the contention of certain gentlemen who say that imports in and of themselves are injurious to our prosperity, is sound.

Mr. BATES. Will the gentleman yield?

Mr. HARLAN. The gentleman from Massachusetts [Mr. TREADWAY] made the statement that he wanted an impartial board to handle these treaty agreements. You either have to have a board that is favorable to reciprocity or you have to have a board that is unfavorable to reciprocity. There is no such thing in this program as an impartial board. It is either favorable to the policy or it is not favorable to the policy.

Mr. TREADWAY. Will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Massachusetts.

Mr. TREADWAY. May I ask the gentleman whether in the original make-up under the law establishing the Tariff Board there was any reference whatsoever to reciprocity?

Mr. HARLAN. I do not suppose so; no.

Mr. TREADWAY. The gentleman states that is the basis now on which the board is appointed.

Mr. HARLAN. We did not have any reciprocity agreements at that time.

Mr. TREADWAY. No; and we should not have them now, either.

Mr. HARLAN. Mr. Chairman, we are faced in this country with a condition that we must meet, and this condition largely grows out of our agricultural situation. We sold three-fifths of the cotton we produced under normal conditions before crop control; we sold one-fifth of the wheat, two-fifths of our tobacco, one-third of our lard, and one-half of our dried fruits. We cannot sell those commodities abroad unless some provision is made for payment. That seems to be obvious. You cannot receive pay for them in money.

Mr. BATES. Will the gentleman yield?

Mr. HARLAN. I repeat, you cannot receive pay for them in money because there is not enough money to take care of it, even if it were all used for this purpose. We have to accept the imports if we are going to have exports. There is only one person in the world I know of who denies that and that is the gentleman from Massachusetts [Mr. TREADWAY].

Mr. BATES. Two gentlemen from Massachusetts.

Mr. KNUTSON. Make it three.

Mr. HARLAN. Those gentlemen believe we can continue to sell abroad and either get nothing in exchange or else get a supply of gold from the moon, because it does not exist in this world, even if it were desirable to work it that way.

Mr. RAYBURN. Will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Texas.

Mr. RAYBURN. If I read history correctly, it was a very distinguished citizen of the State from which the gentleman now speaking comes, a Member of Congress, afterward President of the United States, who announced the policy that we could not continue to sell where we did not buy. That was the great William McKinley.

Mr. HARLAN. That is certainly true. Later than that the great Herbert Hoover said, in connection with excluding imports from this country, that we must not jeopardize the income of 2,000,000 workers who were engaged in working for exports. That is so obvious it does not deserve argument.

Mr. KNUTSON. Will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Minnesota.

Mr. KNUTSON. To what does the gentleman ascribe the fact that for the first time we have an unfavorable trade balance in agricultural products?

Mr. HARLAN. For the first time since when?

Mr. KNUTSON. In the history of the country.

Mr. HARLAN. What does the gentleman mean by that?

Mr. KNUTSON. We buy more competitive agricultural products from other countries than we ship out.

Mr. HARLAN. Well, that is not the first time. The trade balance is not as bad as it was in 1932. It is not as favorable as it ought to be.

Mr. KNUTSON. Will the gentleman put the figures in the RECORD?

Mr. HARLAN. Yes; I will do that. While the gentleman is discussing that, let us speak sensibly for a moment on this favorable and unfavorable balance of trade, whether it is agricultural products or any other kind of products. The most fortunate thing that could happen to this country would be for us to get an unfavorable balance of trade because it would show two things. It would show that our merchant marine was functioning profitably and it would show that our foreign investments were prosperous. What countries in the world are there that have an unfavorable balance of trade? We find such countries as Great Britain, France, Italy, formerly, and Germany, when it was prosperous, had an unfavorable balance of trade and when Germany crashed it got a favorable balance of trade. An unfavorable balance of trade simply means that you are selling more services abroad than you are buying. A favorable balance of trade means you are buying more services than you are selling. That is all it means.

Mr. SOUTH. Will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Texas.

Mr. SOUTH. I would like to call the attention of the gentleman from Minnesota to the fact that the trade balance is tending in the other direction just now. Argentine is now buying corn from this country, whereas as a result of drought conditions we were buying their corn some months ago.

Mr. HARLAN. Yes. During last year there was a great deal of importation of agricultural products from South America and Canada, largely due to our shortage of agricultural products. But may I call the attention of the gentleman from Minnesota to the fact that these importations did not come in under reciprocity schedules. They came in under our old tariff law, and it was due to the drought condition in this country and not to any reciprocity agreements.

The gentleman from Wyoming [Mr. GREEVER] asked the gentleman from Massachusetts this question:

> Does not the gentleman feel there should be legislation which would require the submission of these treaties to Congress before they are ratified?

The answer was "Absolutely."

Let us look a little bit at history on this situation. For over 50 years this country many times in Republican administrations attempted to enter into reciprocity treaties with other countries. Out of all these efforts, numbering over 25, I believe there were actually only 2 reciprocity treaties entered into—one with Hawaii and the other with Cuba. We negotiated a treaty with Canada, but Canada refused to ratify it. We also negotiated treaties with some of the South American countries with a similar result.

The reason you cannot bring these treaties into a legislative body for ratification is that when you do you run up against logrolling blocs which get together and work against certain schedules and in favor of other schedules, and then when you are all through you cannot get a bill. To say we must bring these agreements into Congress for ratification means we start to write tariff bills on the floor of Congress. It simply cannot be done, and it never has been done. To make that statement is simply to say you do not believe in reciprocity.

Mr. BOILEAU. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Wisconsin.

Mr. BOILEAU. Does the gentleman admit, then, that the present trend is to do things the duly elected representatives of the people in the Congress would not do, and that we are doing now what the people do not want, and what the people would not sanction through their representatives? Is not this pretty much of a threat against democracy?

Mr. HARLAN. No; the gentleman is not right. The present trend is to gear up our lawmaking machinery in such a way that the great majority of the common people, the people of the United States, will have an opportunity to have their wishes put into force, and blocs and lobbies will be kept under control. Under the old system groups would get together and destroy any tariff law favorable to the consumers of the United States or our exporting industries. Under the present system we have obliterated the power of blocs to destroy reasonable tariff legislation.

Mr. BOILEAU. Does the gentleman believe the present system is better than true democracy?

Mr. HARLAN. This is true democracy.

Mr. BOILEAU. The gentleman admits the people's views are not being recognized.

Mr. HARLAN. The blocs and lobbies are kept out of this and the people's views are represented.

Mr. KNUTSON. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Minnesota.

Mr. KNUTSON. Should not Congress have the same power to pass upon trade agreements as the parliaments of foreign countries with which the treaties are negotiated? The Cuban Congress passed upon its treaty, Brazil passed upon a treaty, the Argentine passed upon a treaty, and the French Chamber of Deputies passed upon a treaty. Does the gentleman mean to insinuate the American Congress is not as well qualified to pass upon such treaties as these foreign legislative bodies?

Mr. HARLAN. No; I do not, but the British Parliament, for example, operates under an entirely different basis from our Congress. The Cabinet draws up these measures and they are proposed by a Minister.

[Here the gavel fell.]

Mr. KNUTSON. Mr. Chairman, I yield 1 additional minute to the gentleman from Ohio.

The gentleman is speaking beside the subject when he mentions Great Britain, because we have not yet negotiated a treaty with Great Britain. I have reference to the South American republics, France, Belgium, and some other countries, with which we have already negotiated treaties.

Mr. HARLAN. The gentleman is now entering into questions which are rather delicate to discuss on the floor of the House when we are discussing foreign countries, but I may say the South American countries are very largely one-party countries.

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield 10 additional minutes to the gentleman from Ohio.

Mr. BATES. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I yield to the gentleman from Massachusetts.

Mr. BATES. In view of the statement of the gentleman that he does not believe any present imports are ruinous to industry, what is the gentleman's point of view about imports which are injurious and ruinous to industry, and I refer especially to the shoe industry, whose injury I can prove?

Mr. HARLAN. The imports in connection with the shoe industry are just one-fourth of what they were when the shoe industry was in its most prosperous condition.

Mr. BATES. When the shoe industry was being ruined by such imports a protective tariff of 30 percent was established. At the present time the tariff is 20 percent.

Mr. HARLAN. At the time the 30 percent protective tariff was established there were 3,248,000 pairs of shoes imported, which is almost twice what is now coming in.

Mr. BATES. The tariff was 20 percent and was later increased to 30 percent.

Mr. HARLAN. I have answered the question to the best of my ability.

Mrs. ROGERS of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I yield to the gentlewoman from Massachusetts.

Mrs. ROGERS of Massachusetts. What about the velveteens which are being imported in such quantities from Japan? Only a few weeks ago one velveteen industry closed in the city of Lowell, which is in my home city. The situation for the velveteen industry is very serious. The Japanese are not keeping their gentleman's agreement in respect to velveteen, although they are keeping their agreement with regard to cotton I learn——

Mr. HARLAN. I regret I am not familiar with the velveteen situation. I am very much afraid that industry may possibly be injured by local conditions in this country as much as by importations.

Mrs. ROGERS of Massachusetts. It is generally agreed, I believe, the industry is being injured by Japanese imports, and velveteen is on the agenda in the negotiations with the British Empire.

Mr. HARLAN. There is no question that imports will possibly injure a specific industry, and this is why we must have hearings, in which such questions as the velveteen industry may have its hour in court and go into all the facts surrounding the situation. However, except under very exceptional circumstances, imports will not injure all industry, because for every dollar's worth of imports a dollar's worth of exports must go out in some form or another.

Mr. BATES. Mr. Chairman, will the gentleman yield again at that point?

Mr. HARLAN. No; I am sorry, I cannot yield.

Mr. SHANLEY. The gentleman means a dollar's worth of services?

Mr. HARLAN. Either services or exports; it does not make any difference.

So the only thing that happens from imports coming into a country is to shift employment from one industry, possibly, to another industry.

Long before this administration came into power, under the Hoover administration, the Department of Commerce made a survey of labor conditions in this country and found that the wages paid in industry in this country were the lowest in the highest protected industries. The watchmaking industry, one of the higher beneficiaries of our tariff, I think headed the list of low-paid industries, and the wages were universally higher in the nonprotected industries. You can go into your own community, Mr. Chairman, and pick out the industry that is receiving the highest protection, and you will find an industry that is paying the lowest wages.

When we accept imports in an industry that is under high protection to encourage an export industry that gets no protection at all, we are simply shifting wages from a low-paid bracket to a high-paid bracket, and far from hurting this country, increased exports by increasing imports, can do nothing but help us except in certain cases there may be minor injuries occurring in some small industry, but not in the country generally.

Mr. BATES. Would the gentleman call the shoe industry a minor industry?

Mr. HARLAN. I have not heard anything that is convincing to me that the shoe industry is being injured in any way.

Mr. BATES. I think I could convince the gentleman of that fact if I had the time.

Mr. HARLAN. I wish the gentleman would not continue to interrupt my speech.

Mrs. ROGERS of Massachusetts. Does it not stand to reason it will be impossible for us to keep our standards of living and wages if goods continue to come in from other countries where the laborers are paid very small wages? I am very much interested in this discussion and the gentleman is very courteous to yield. It is the gentleman's time, and I appreciate it.

Mr. HARLAN. The gentlewoman from Massachusetts is familiar with Alexander Hamilton's report on manufactures which was given to the Congress 150 years ago, and was the basis of our whole tariff policy.

At that time Hamilton reported to Congress that it would be necessary, if we were going to have manufacturing in this

country, to impose tariffs, because the wage scale that then existed in the United States was so high we could not begin manufacturing without tariffs. From that time to this, every concern that has come before this Congress and asked for a tariff has told the Congress they could not manufacture unless they got a high tariff to pay the wage scale that already existed in the country. Then after the tariff was granted, they turn the thing around and say the high-wage scale is due to the tariff. There is not a more absurd thing that could be stated. Do you know that only 25 percent or less of the labor in this country gets any benefit from the tariff whatever? The service industries get no benefit and are not protected. This means railroad labor, the highest paid labor we have in the country, and also includes the building trades, with no tariff protection, and also the men employed in the automobile industry, radio, electrical and agricultural machinery, and everything that we export. They get no benefit because they have to compete with world labor.

Mrs. ROGERS of Massachusetts. I said competing industries. But the gentleman admits tacitly the wages must be lowered to compete with low wages abroad?

Mr. HARLAN. I said the very highest wages paid in this country are in the very groups that get no tariff protection at all.

Mrs. ROGERS of Massachusetts. Well, I wish they could be protected, if they ever need protection.

Mr. HARLAN. They do not need protection. They are getting the normal American wage scale and they do not ask for any protection.

Mr. MICHENER. Mr. Chairman will the gentleman yield for just one short question?

Mr. HARLAN. All right.

Mr. MICHENER. As a matter of fact, it is the wage due to the tariff that makes the purchasing power so that you can pay the high wages for service which does not come in competition, like utility salaries and other salaries of that kind.

Mr. HARLAN. I just told the gentleman that the investigation of the Department of Commerce under President Hoover demonstrated absolutely that the lowest wage brackets in this country were in the tariff-protected industries.

Mr. KNUTSON. That is the reason we gave them protection.

Mr. MICHENER. That is the reason we are able to pay the other high wages. The gentleman spoke of automobiles. Give us a monopoly, as we have had in automobiles, and we do not want any tariff; but just as soon as they commence to make them over there we have got to have a tariff, or we cannot continue to make them here.

Mr. HARLAN. The thing that makes wages in any country is the efficiency of labor.

Mr. MICHENER. That is old talk—I talked that for years.

Mr. HARLAN. I am pleased that the gentleman admits that at least in the past he admitted a knowledge of political economy and the factors that determined real wages as distinguished from money wages. The only thing the tariff does is to change the real wages that a man gets into lower brackets. It does not affect money wages at all.

Mr. KNUTSON. It puts butter on our bread.

Mr. HARLAN. If the gentleman believes that still, he does so in spite of the best efforts that students of the question have given to it.

A great criticism has been made about these reciprocity treaties because they included the most-favored-nation clause. When we entered into this reciprocity program we were suffering from retaliatory tariffs that grew out of the so-called Grundy tariff law of 1930. Other nations had made special tariff laws against us. It was to our interest to break down those special tariff laws directed solely against us by these reciprocity treaties. We could not get a most-favored-nation clause ourselves unless we granted it to other nations. Nations do not deal in that way, and what good would it do us to negotiate a reciprocity treaty with some country if the next week that country gave better rates to some other country? That would not gain anything.

The amount of our imports which have been affected by the most-favored-nation clause is $30,000,000 a year.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. LUDLOW. Mr. Chairman, I yield the gentleman 3 minutes more.

Mr. HARLAN. Our exports which have been stabilized in foreign countries by getting the most-favored-nation treatment amounts to $265,000,000. We have an almost 9-to-1 ratio in benefit received, and the reason is that we entered into these most-favored-nation agreements and treated all countries alike, although other countries were not treating us in that way. By this policy we have simply neutralized the unfavorable reaction growing out of the tariff of 1930. Furthermore, in almost all of our treaties where the most-favored-nation clause is included we have dealt with commodities peculiar to that Nation. Other countries have received little benefit. Hence the 9-to-1 ratio which I mentioned.

The gentleman from Minnesota [Mr. KNUTSON] said that we are going back to free trade. Nothing is further from the truth. The only thing that we have done in these reciprocity agreements has been gradually to go back to the Fordney-McCumber rates of about 1920, and in a few cases we have gone back to the Underwood tariff. Nothing radical has been done with these treaties. Every one that has been proposed has brought forth hysterical cries that we are going to ruin the industries "in my district", and there has never been any harm done and a great deal of good has been done.

The value of our exports during the first 11 months last year amounted to $3,026,000,000, an increase of 36 percent over that period. The imports amounted to $2,875,000,000, or an increase of 32 percent. During the first 11 months of 1937 the exports to trade-agreement countries were increased by 42.6 percent, and the exports to non-trade-agreement countries increased by 32.2 percent. You cannot escape those figures. If our civilization is based on trade, the thing to do, the only sensible thing for us to do, is to increase trade as much as possible.

Mr. KNUTSON. Mr. Chairman, will the gentleman yield?

Mr. HARLAN. I cannot yield.

Mr. KNUTSON. But the gentleman referred to me.

Mr. HARLAN. The gentleman from Massachusetts [Mr. TREADWAY] commented on the interest which Sir Ronald Lindsay, the British Ambassador, had expressed in these agreements. In the name of reason, why would he not be interested? Tariffs are nothing less than commercial warfares. An expansion of international trade through the lowering of tariff duties means commercial peace, and commercial peace is the very best foundation for military peace. Why would not England and the United States, the two greatest democracies in the world, seek to establish not only peaceful relations with themselves but with all other countries as well?

Just call the roll of the countries that have gone to the furthest extent in trade barriers—Germany, Italy, Russia—nations that are today disturbing all the peace-loving nations of the world. Japan has not as yet joined this trade-restriction policy because her very life depends upon free-flowing commerce.

High tariffs mean extreme nationalism; extreme nationalism means the ruin of capitalism. If we are to have capitalism we must have free international investment. Free international investments can only exist as long as there is sufficient trade to permit the payment of dividends on investment. Just at the present time there is no American investment in Germany, for example, that can withdraw any dividends from that country, because trade conditions are not such as to justify such withdrawal. If our American investors would but realize that the destruction of international trade in a very short time will make foreign investments an impossibility, and that all of their accumulated

capital will have to find an outlet in this country or be hoarded to attract the avarice and criticism of those groups who seek to destroy democracy, their interest in increasing foreign trade and in lowering trade barriers would be greatly accentuated. In short, there is no more important factor to world peace, high wages, normal agricultural expansion, and the preservation of capitalism itself than the opening up and expanding of international trade.

In promoting these reciprocity agreements our Secretary of State has, to my mind, made the most valuable contribution to our national life; and whatever else may survive of the New Deal—and those of us who have supported it believe that there is much good in it—one thing is absolutely certain, and that is that history will record our reciprocity policy as a tremendous forward step in civilization. [Applause.]

[Here the gavel fell.]

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. DITTER. Mr. Chairman, I yield 10 minutes to the gentleman from Kansas [Mr. LAMBERTSON].

Mr. LAMBERTSON. Mr. Chairman, I have obtained this time to pursue a little further the discussion in respect to the power proposed to be given the President to eliminate or reduce individual items in an appropriation bill, which has been under discussion for a couple of days. The Committee on Appropriations will meet in the morning at 10:30 o'clock to take up for the first time in this session this very important thing. We had not considered it when it was proposed here the other day. Many gentlemen here on Monday last voted to retain in Congress the power to declare war, but right here the President is willing to take away from Congress the power it has over appropriations and permit him to eliminate items or parts of items. This amendment affects all appropriation bills. We were sucked in on this proposition. The Members on the ranking side, the minority Members, are all fixed to carry it out when they go to the Senate. We have been swept off our feet unless we can retrace our tracks in the next day or two. It is important if anything is said to say it today, because we are going to meet tomorrow and make some recommendation, as the gentleman from Indiana said today, and submit possibly a committee amendment later. The great appropriation bills almost universally are acted on at the end of a session. The conference reports do not come in until that time. There are not many exceptions to that. It is the last week of the session before the Senate and House conferees get together, no matter if we should pass the bill in January, February, or March. It will usually be June before the final conference reports are agreed to.

This amendment provides that the President can eliminate any time after it has passed, any time after it is passed, no definite limit, but that the Congress has 60 days from the day of the President's action in which to reduce the period of making it effective. There is no power given Congress in the resolution to override the President's action. Get this, it is clever.

Note, too, that the word "veto" is carefully omitted. The words are "eliminate or reduce." This is planned to escape possible constitutional amendment necessity.

Furthermore, there is no language here to prevent the President from eliminating or reducing items any time before the money is spent, comprehending two sessions, or even after the bill is signed. The resolution is a monstrosity.

If the President eliminates items at the end of a Congress that is the end of it. If it is the first or special session we have a chance when we come back. But the thing is preposterous when we contemplate the result that will flow from the amendment we passed here Tuesday.

There are three arguments I want to make against this proposal. First, every man of us, every man in every district, and there are 435, has some particular thing in which he is interested, even though he may not urge it continuously on the floor or in committee. Members are interested in protecting their projects. They will be scared of the President. They will go directly to him to see that he does not eliminate their item. That puts them under obligation to the President so that he can use them on everything pertaining to legislation. The Member sells himself for his little mess of pottage to the President of the United States so that the President can control his vote and everything else. That is the hazard of this proposition of giving the President the power to veto individual items. It makes the individual Member subservient to the President indirectly for all legislation. It goes strongly toward a dictatorship.

The second point is that a relaxation of interest will result, as was stated this afternoon when the gentleman from New York [Mr. TABER] brought out the point; it will lead to a relaxation of effort on the part of members of the committee. In the Appropriations Committee men got up and said they would resign their subcommittee chairmanship if this thing went through. If the President of the United States is going to be the final arbiter on every point of an appropriation bill, what is the use of our paying any attention to these bills and discharging our obligations?

Mr. KNUTSON. Mr. Chairman, will the gentleman yield?

Mr. LAMBERTSON. Briefly.

Mr. KNUTSON. I agree thoroughly with the gentleman that it would place Congress under the thumb of the President if we permit him to veto items. On the face of it, it looks good.

Mr. LAMBERTSON. Yes; on the face of it.

Mr. KNUTSON. But it is going to do more to wipe out the independence of Congress than anything we could possibly do. I do not care who the President is, he is going to use it to intimidate.

Mr. LAMBERTSON. I thank the gentleman for that contribution.

The gentleman will recall that before the amendment was agreed to the other night some of our minority Members, remembering what the present President of the United States had done to the veterans, had an exception made of the Veterans' Bureau, because they knew of some venom that had been expressed toward the veterans in the last 5 years; so they made an exception of the Veterans' Bureau; and the gentleman from New York [Mr. TABER] said here today that he believed they ought to make an exemption of the legislative bill or the President could reduce the total appropriation for the salary of Members.

As Members think of the possibilities involved they will find many things they will want to exempt from this power.

Mr. BOILEAU. Mr. Chairman, will the gentleman yield?

Mr. LAMBERTSON. I yield.

Mr. BOILEAU. The gentleman will remember that last year we appropriated $350,000,000 for the C. C. C. camps but the President by Executive order reduced the appropriation by $35,000,000, or 10 percent; so he is now exercising some power over appropriations. Does the gentleman maintain that that was not usurpation of power?

Mr. LAMBERTSON. No; anything that he has done under the authority he has is all right.

Mr. BOILEAU. Apparently, if he could reduce an appropriation by 10 percent, he could reduce it by 25 percent or by 50 percent.

Mr. LAMBERTSON. But we did not give him power to reduce all items in a bill, or anything like it.

Mr. BOILEAU. If he has that power—I am not saying that he has—is he not now exercising veto power over appropriations of Congress at least to the extent of reducing appropriations made by the House for the C. C. C. camps? If he can reduce them 10 percent, why can he not reduce them 75 percent or 100 percent?

Mr. LAMBERTSON. We did not give him power to do that.

Mr. KNUTSON. If the gentleman will pardon an interruption, as I understand it, he does not reduce appropriations; he just orders that the Departments or the bureaus not spend a certain percentage of their appropriations.

Mr. BOILEAU. Is not the effect the same? If he can withhold 10 percent, why can he not withhold 50 percent or

90 percent? And as a result of that power, if he has that power now——

Mr. KNUTSON. He should have that power.

Mr. BOILEAU. Could he not control the Federal Trade Commission or any other agency of the Government? I am just asking for information.

Mr. KNUTSON. Congress has given him the power to impound funds to a limited extent.

Mr. LAMBERTSON. I think the gentleman has exaggerated his power a little. He does have some authority over his Cabinet officers and bureaucrats.

Mr. BOILEAU. If he has that power now to reduce appropriations, does he not, in effect, then, have the power of veto over acts of Congress; does he not, in effect, then have power over the appropriations of Congress even without resubmitting them?

Mr. LAMBERTSON. To a very limited degree; but nothing compared to this proposal.

If the President vetoes items in an appropriation bill under this resolution, it is not he who does it. It is some bureaucrat who comes to him and tells him to do it. He has not the time to do this, even with the six administrative assistants, and so forth. He has not time to pay personal attention to that, but he will listen to some fellow who tells him that his department is being duplicated in some other bureau. The President will then veto that bureau's item to humor this bureaucrat over in the other bureau. That is how he will act.

Mr. BOILEAU. But it is upon the President's authority this money is impounded. I am asking for information. I did not understand until this action was taken last year that the President could exercise that power.

Mr. LAMBERTSON. He does not exercise it very much.

Mr. BOILEAU. I did not know that power was vested in him.

I would like to ask the gentleman, if he knows, and if he does not, the gentleman from Virginia [Mr. WOODRUM] may give the information. In this instance the President reduced the appropriation 10 percent. Has he the power to go below or impound more than that 10 percent? In other words, what is the limit?

Mr. WOODRUM. There is no law on the statute books or in the Constitution which requires the President to spend the money which we appropriate.

Mr. BOILEAU. Is there any specific authority so he can reduce the appropriation?

Mr. WOODRUM. He impounds it in the Treasury, which he did in the instance the gentleman speaks of.

Mr. BOILEAU. Is there any specific legislation or is that a general power?

Mr. WOODRUM. It is a general power. The resolution to which the gentleman objects, however, requires him to come back to the Congress for the Congress to finally pass on it, which is not done under existing circumstances. To that extent it gives greater control to the Congress.

[Here the gavel fell.]

Mr. DITTER. I yield the gentleman 3 additional minutes.

Mr. BOILEAU. Will the gentleman yield further?

Mr. LAMBERTSON. I yield to the gentleman from Wisconsin.

Mr. BOILEAU. If the President now has that power, why did the gentleman from Virginia want to give him additional power?

Mr. LAMBERTSON. Let the gentleman from Virginia answer the question.

Mr. BOILEAU. If he exercises that power, he does not need the additional power.

Mr. LAMBERTSON. He has asked for it, and that is the reason. The President asked for that power in his message, and we have to give the king anything he asks. Mr. WOODRUM said it requires the President to come back to Congress for final action. The resolution says nothing of the kind. There is no comeback stated.

There is only one excuse for this, and I do not know but what I could go along with the proposition. However, I do not like the way it has been brought about. There is only one justification, and that is the "pork barrel" habit that exists in this House, particularly in the last year. You remember during the closing days of the last session when the Natchez Trace, the Skyline Drive, the Big Thompson, and the Grand Coulee groups were buddies together. If the high dignitaries of this House, the Speaker, the floor leader, and the other leaders of the House, will frown on this "pork barreling," and if the President of the United States will veto an appropriation bill totally at times, sending it back here for passage again and point out the things that have been "pork barreled," things might be different. That is the thing for him to do. Let him veto a whole bill. Why, he very nearly vetoed the Interior bill last year because there was in it an item of $14,000,000 for vocational education. He did not like this item, and he gave out a big statement to the press in reference to it. There were $154,000,000 appropriated in the bill, but only $14,000,000 actually in dispute, yet he pretty nearly vetoed the whole bill on account of that item being $14,000,000 rather than eight or ten.

Mr. BOILEAU. Will the gentleman yield?

Mr. LAMBERTSON. I yield to the gentleman from Wisconsin.

Mr. BOILEAU. Does the gentleman know whether it is contemplated to spend that $14,000,000?

Mr. LAMBERTSON. No; they will not need it.

Mr. BOILEAU. If the will of Congress has been set aside, has there not been a veto?

Mr. LAMBERTSON. The money is there yet.

Mr. BOILEAU. But it is not being used. The will of Congress is not being followed.

Mr. LAMBERTSON. It can be brought back and spent when they need it. They do not need all of the $14,000,000 and he pretty nearly vetoed the whole bill on account of that one item. He would have eliminated this item if this resolution had been in effect. This simply shows that a President can pick out little things and get awfully sore about them. Why did he not have courage to veto the whole bill and send it back to us for further consideration?

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield 15 minutes to the gentleman from California [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I hope that nobody will object if I come back to a discussion of the bill now under consideration, and one particular item appearing therein. This item appears on pages 24 and 25 of the committee print, and has to do with the sum of $18,037,000 appropriated for the Coast Guard.

At the proper time I am going to ask to amend the bill by changing the figure $18,037,000 to $18,296,248. I shall do this for the purpose of carrying out existing law. This would be $259,248 more than is carried now, and would provide for the payment of what are known as reenlistment allowances to members of the Coast Guard.

When the Navy appropriation bill and the Army appropriation bill come up for consideration it will be necessary also to offer amendments to add additional amounts for payment of reenlistment allowances in those branches. I want to trace the legislative history of this reenlistment allowance that has in the past been paid to the enlisted personnel of the Army, the Navy, the Coast Guard, and the Marine Corps.

It was in 1855 that the idea first started. On the recommendation of the then Secretary of the Navy, J. C. Dobbin, who stated that in order to encourage more permanent enlistments, to identify them more thoroughly with the Navy, and elevate their character by a plan of rewards as well as punishment, a gratuity or allowance was granted for reenlistment. This was slightly modified in 1912, and then in the Joint Service Pay Act of June 10, 1922, the present system of reenlistment allowances was provided for. Under this law the men in the top three grades, if they reenlist within 90 days after they are honorably discharged, are entitled to $50 times the number of years they have served in their previous enlistment period. The men in the lower

four of the seven pay groups are entitled to $25 times the number of years they have served.

Each year following 1922 appropriations were carried in the Treasury-Post Office, the Army, and the Navy appropriation bills to pay these reenlistment allowances.

In 1933, when there came before the Congress the Treasury-Post Office bill, which was signed on March 3, 1933, making provision for the fiscal year 1934, a short proviso was carried in the bill which stated that during the coming year no appropriation could be used to pay reenlistment allowances. This was a part of an economy program, and affected the lowest-paid group of men who work for the United States Government. The proviso passed, and then each year until this year, when the Treasury-Post Office bill was under consideration making provision for the fiscal year of 1938, a proviso has been carried which continues in effect the ban on reenlistment bonuses by just reenacting the provision in the 1933 bill. A point of order was made against the proviso in February of last year. The point of order was sustained and the ban was thrown out. Then a proviso was inserted by the Senate in the second deficiency appropriation bill, and it came back to us as a conference report. I believe the proviso was subject to a point of order in the Senate, but the point of order was not made.

When the bill came back to us it was impossible to make a point of order against the proviso, so it had to be voted on. The proviso that year was passed and added to the deficiency appropriation bill by a vote of 134 to 101.

When the proviso was added to the second deficiency appropriation bill by the Senator from South Carolina, the Senator from Wisconsin inquired why this proviso was being put in the bill and asked for an explanation of it. He was answered in this way:

> The language of the amendment has been carried ordinarily in the Treasury-Post Office appropriation bill, but was not carried in that appropriation bill this year and is therefore proposed to be included in the bill now before us. The effect of it is simply to carry the same limitation that has been carried for years in the appropriation bills. Its purpose is to continue the appropriation situation that has existed for years so that no bounty shall be paid for reenlistment in the military and other uniformed services.

This was the only explanation given of the proviso, and on the face of it you can see it explains absolutely nothing except to say, "We are going to continue the condition which has existed before."

Mr. McFARLANE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Texas.

Mr. McFARLANE. If this matter were to be handled according to the regular procedure it would be left to the legislative committees of the House having charge of authorizations on such subjects?

Mr. SCOTT. The gentleman is correct. I am going to suggest later that if we intend to continue this program in the future it be done in that way rather than through an appropriation bill.

Mr. McFARLANE. We should either do that or abolish these committees.

Mr. SCOTT. Well, yes; an argument could easily be made for such a proposal.

When the matter came into the House an entirely different argument was used. In the Senate they were told, "We are simply continuing an appropriation condition that has been true in the past. We are just doing the same thing over again." When we got into the House a different explanation was given. We were told here in the House this was just for the next year, and was more in the nature of an emergency policy. When the proposal was under discussion last year the chairman of the committee stated, "I want to call the committee's attention to the fact we are only asking that this be done for the next fiscal year. It is not permanent." However, the proviso went into effect in 1933 and has been carried in the bill each year since that time. It begins to look as if the Committee on Appropriations intended it should be a continuing policy. While they tell us it is a temporary policy for next year only, we get it each year.

Mr. McFARLANE. Does not the gentleman believe if we are going to continue to sandbag these boys who do the fighting, the bleeding, and the dying, these boys down at the bottom, we ought to carry this right on through and make a proportionate reduction in the salaries of all the officers?

Mr. SCOTT. Certainly, I agree with the gentleman's statement, but instead of lowering the others all along the line, I want them raised. I want naval appropriations spent on men. I want them to have decent pay. Don't cut; raise. At least give back what has been taken away.

I call your attention to the fact, and I hope you will remember this when the amendment is offered, that this is the only item that is left of the original Economy Act. This practice started under the Republican administration of Mr. Hoover, but it makes no difference to me who did it first, because it is still here and we are continuing it.

This is the only remaining part of the Economy Act; and it is aimed against whom? The lowest-paid men in the service of the United States, the men who get from $21 a month up to $157 a month. I believe the highest-paid enlisted man in the Navy gets $157.30. As I understand, this is the highest pay possible, and nobody draws it now. The lowest-paid man gets $21 a month, and he is the man who is being affected by the elimination of the reenlistment allowance.

Mr. LUECKE of Michigan. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Michigan.

Mr. LUECKE of Michigan. Can the gentleman tell us what effect this has upon reenlistment?

Mr. SCOTT. I will come to that subject later. I would rather not take it up now.

Mr. McFARLANE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Texas.

Mr. McFARLANE. Is it not true this is jumping on what we might call a bunch of cripples who cannot vote in anyone's congressional district?

Mr. SCOTT. A lot of them do not vote, and they have nobody to represent them. When the Committees on Military or Naval Affairs or the subcommittee on Navy Appropriations hold hearings these men are never called to appear. If they do appear before these committees, somebody is sitting right at their elbow to frown at them and tell them not to say anything they should not say. You always hear from the top fellows, the admirals and the captains. I must say the Secretary of the Navy and the Secretary of War have both asked in the past that these reenlistment allowances be paid to the men for the good of the service. They did not ask for it this year because it was not in the Budget this year, and they cannot urge anything which is not in the Budget. But we never allow the enlisted man an opportunity to tell us how he manages to live on the pay he gets.

A little more about the enlisted man's pay.

I represent the city of Long Beach as a part of my district, and a lot of Navy people live there. Do not get the idea in your heads they are an organized bunch of voters that I am trying to corral here. They are not, even though I would not object if they were. But a lot of them do not vote and a lot of them are at sea on election day. In the Long Beach and San Pedro area 6,269 enlisted men live with their families. There are 6,269 families living in that particular district. We have taken a survey of them according to their income—not their Navy pay, but according to their income, including what they get, what their wives can make, or what they may get from any source—and they are divided into seven groups, from the top-income group down to the lowest-income group. For example, there are 364 families residing there who have an average monthly income of $154. There are 123 families living there whose average monthly income is $38.04. This is from the top to the bottom. The greatest number of families, 1,329, have an average monthly income of $62.56.

Some of your people come in here and criticize because we are paying relief clients or those who are on W. P. A. only $55 a month. The question is often asked how we expect any person on relief to get by on $55 a month, but we are expecting people who serve the United States in its armed forces to get by on $38.04, paying them even less than you pay relief clients and paying them less than you pay W. P. A. workers, and, understand, these are families with a man and wife in all cases and with children in most cases. When you figure out what they have to pay for their houses and home accessories, it makes a bad picture.

This lowest income group of 123 families, with an average monthly income of $38.04, has to pay an average monthly rent of $21.67. Their home accessories average $2.10. This means that after they have paid their rent and paid their home accessories, these 123 families have to get by on $14.27. They have to pay for food, they have to pay for clothing, they have to pay for medical care, they have to pay for dental care and they should be entitled to some kind of recreation. All of these things, not even considering the possibility of savings, they have to do on $14.27 a month. If you took just the pay and did not consider their additional items of income the picture would be worse than ever.

I am talking about reenlistment allowances now as a part of the pay that the men had been getting until 1933 which helped them to live. If they were in the top brackets they would get $50 a month times the number of years they had served, usually 4 years, and in the case of the Coast Guard it is usually 3 years. Those in the top brackets would get $200 in the Navy or $150 in the Coast Guard to add to their salaries. In order to be more accurate, here is what the law says:

On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of 3 months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of 3 months from the date of his discharge.

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield the gentleman 5 additional minutes.

Mr. SCOTT. Remember that this item of reenlistment allowances was placed in the Joint Service Pay Act. The men have considered it a part of their pay. They had looked forward to the getting of it to pay debts, to pay the expenses of their trips home, because they were given leave to go home if they could afford it, and they were using it to replenish their own wardrobe. When a man goes into the Navy for the first time he is given an allowance to buy a uniform. In the Coast Guard he gets about $104 when he goes in to buy a uniform. When his enlistment period ends and he reenlists, he does not get an allowance for the uniform. His reenlistment allowance took the place of that. So these men had expected to get this money at the end of their service. When you take it away from them and do it by saying we are just doing it for next year—just the next fiscal year—holding it in front of them all the time and have them thinking that some day they are going to get it back, or as the gentleman from Virginia himself said, "Yes, we would like to give this back some day when we are able to give it back," you are not being fair to them.

This amounts to $259,248 in the Coast Guard.

Compare these figures with the amount of money we are spending on other things.

When you talk about reenlistments, bear in mind that in the Coast Guard about 88 percent of the men reenlist. Figures will show you that in periods of prosperity it is necessary to enlist large numbers of new men. In periods of depression it is not necessary to enlist large numbers of new men. Enlistments and reenlistments sort of follow along with the prosperity curve. When it is hard to get a job on the outside the men do reenlist, but they have been reenlisting with the idea that some day they are going to get this reenlistment allowance back, but when they can find jobs outside, they will take them.

Mr. LUECKE of Michigan. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. Let me read these short figures to prove my point. In 1934 it was necessary to enlist only 11,575, and in 1935 only 10,785. When it was hard to get jobs outside they wanted to stay. But in 1936, when jobs were appearing on the outside, it was necessary to enlist 18,039 new men. In 1937 it was necessary to enlist 15,484 new men. Remember, that when we bring a new man into the Navy—that is, when he enlists for the first time—he has to go through training at a cost of $228.40. It costs that to train a new man. You have that initial cost of $228.40 to get him ready to serve. Then he goes through 4 years to become a technician and at the end of 4 years in the different technical features of the United States Navy a man has learned things, and it is going to take 4 years for a new man.

Mr. LUECKE of Michigan. In other words, it is false economy because it is a blow at efficiency.

Mr. SCOTT. I think the gentleman is right. Just by way of conclusion—and I shall have to extend rather extensively—I call attention to correspondence that I have had on the subject with a woman in my district who wanted to get her husband out of the Navy. She wrote to the commanding officer and said:

We find it is impossible with the present high cost of living to adequately provide a home for ourselves and our daughter on his pay which he now receives from the Navy. He has an opportunity to accept a job which will pay $150 a month upon discharge from the Navy, by which we could provide a good home and environment for our daughter—

And so forth. Of course, the commanding officer said no, that they could not let him go. Then she wrote to me and asked if I could do something about it. I said I would try, but I did not hold out any hope.

I wrote to the Chief of the Bureau and got back a reply which said that to discharge this man for the reasons advanced would not only be unfair to the many men whose requests, based on similar reasons, have been denied, but would establish a precedent and be detrimental to the best interests of the service. Many men are asking to get out of the United States Navy because they can make more money on the outside. Now, Mr. Chairman, I am going to ask the committee to make provision for $259,248 to pay reenlistment allowances in the Coast Guard. I have tried to show you why it should be done. The item was not put into the Treasury-Post Office bill this year. The law says that it shall be paid but it cannot be paid unless money is appropriated for the purpose. I trust you will support my amendment when it is offered.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. DITTER. Mr. Chairman, I yield 15 minutes to the gentleman from Wisconsin [Mr. SAUTHOFF].

Mr. SAUTHOFF. Mr. Chairman, yesterday my attention was called to the fact that in a radio broadcast the gentleman from New York [Mr. CELLER] made the statement that Nazi propaganda was used to support the Ludlow war referendum and was being cooperated in and fostered by the Von Steuben Society of America. I believe I am the only Member of Congress who belongs to that society, and I therefore ask your indulgence to contradict any false impression that may have gone out on that score. I called Mr. CELLER on the telephone and asked him if he had made any such statement and he said no, that the statement that he had made was to the effect that he had recited the organizations that were in favor of the Ludlow referendum, and he included among them the Von Steuben Society. Mr. Chairman, that society has advocated a war referendum since 1919, long before Adolph Hitler was even dreamed of as occupying any place nationally or internationally. My conversion to the policy carried into the Ludlow war referendum goes back to May 1916, when the older La Follette,

whom I always considered as Wisconsin's greatest statesman, set forth in one of those stirring editorials which he alone could write, an appeal for a constitutional amendment in his magazine, the La Follette Weekly, asking why it was wrong for those who suffered all of the agonies and the heartaches, who experienced all of the misery, who bore all of the wounds of war, should have no voice whatever in deciding whether or not this country should go to war and I felt that the elder La Follette was right in maintaining that policy.

Since then I have advocated it in public speeches wherever I have gone. I spoke probably 60 or 70 times in public during last summer. I refused to speak on any other subject than the next world war, and I brought out a reference to the Ludlow war referendum in practically every speech. My district at least is well educated on that subject. The Von Steuben Society has nothing whatever in common with Adolph Hitler of nazi-ism. Personally I think I express the views of every member of our community when I say that. The unit in my home city of Madison, Wis., is called the Robert Siebecker Unit, named after a former chief justice of the Supreme Court of Wisconsin, who was a brother-in-law of the late Robert M. La Follette and uncle of the present Governor and senior Senator from our State. We have no race prejudice in our society. The secretary of our Robert Siebecker Unit is a Jew, whom we elected to that office, Judge S. B. Schein, of Madison, Wis., whom I am proud to call my friend, a man of very high standing, a man of learning and education, a man who enjoys the confidence and affection of all of the people of our community. Surely, if there had been any prejudice on our part he would not even have been invited to become a member, much less to have been elected to an office in that organization. I personally abhor Hitler and nazi-ism and all it stands for. I abhor it as much as I do Mussolini and fascism and all they stand for, and I abhor it as much as I do Stalin and communism and all they stand for.

I abhor it as much as I do the military oligarchy that rules Japan. They are all, in my judgment, a piece of the same cloth. They rule by force, they rule ruthlessly. They trample under foot the rights of individuals, and they maintain themselves with the mailed fist, bloodshed, and all the atrocities which the human mind is capable of inventing. We want none of them.

In order that you may understand that my organization has nothing in common with them, but that many of us have a great deal in common with the Von Steuben Society, let me tell you a few of the things this society stands for. I read from the preamble:

Whereas we recognize the tremendous problems confronting our United States, we pledge ourselves to stand unflinchingly for government by due process of law and denounce in the strongest terms any groups, open or secret, that attempt to take the law into their own hands; and we will not render aid or comfort to any organization based on prejudice or discrimination against any citizen or class of citizens for reasons of race, color, or creed.

We believe in the system of government as provided for in our Constitution, viz, the executive, the legislative, and the judiciary.

If our existing system of government is to be changed, it shall be done, not by indirection but by the orderly process of amending the Constitution.

We advocate:

(a) The adoption of an amendment to the Federal Constitution which will give power to Congress to regulate the employment of child labor.

(b) Provision for unemployment insurance.

(c) Provision for adequate old-age pensions.

We are in favor of a pension system which will insure an adequate pension to all men and women who have reached the age of 60 and are unable to support themselves or have no means of livelihood during their old age.

We advocate:

(a) The elimination of tax exemption on any and all classes of securities.

The employment of any person on Government undertakings shall not be based on his or her political affiliations, nor shall employment in the civil service be based on any other qualification than personal merit, and that public service should be fostered as a career.

It is our firm belief that it is to the best interests of our country that the provisions of the laws governing employment in the civil service thereof, be it Federal, State, or local, be strictly applied on the basis of merit, and not as a reward for political services rendered or to be rendered.

The failure of many of our banking institutions to carry out the recommendations of the Government in the matter of extending loans and assisting mortgagors clearly points to the necessity of control of our banking system by the Federal Government.

We believe in the competitive system without business dictatorship, preservation of the small-business man, and the enforcement of the antitrust laws.

Minimum wages, maximum hours, collective bargaining, and labor protection through uniform State laws, interstate compacts, and the action of organized industry through trade associations and labor unions should be provided for by a Federal constitutional amendment.

We believe that it is in the interest of the whole country that the farmer shall receive a fair profit on his investment and labor, but we do not advocate the destruction of foodstuffs or limitation of the production thereof whereby the cost of living is increased and the foreign producer is benefited by exporting his foodstuffs to our country.

We favor low-cost housing and slum clearance, undertaken by private enterprise and local government with Federal aid.

We are in favor of the conservation, development, and effective National or State control of our country's water power and natural resources; and the supervision and regulation of public utilities.

In a democracy the safety of the state depends upon the intelligence of the citizen, and an intolerable condition now confronts large parts of the country which deprives thousands of children of even the rudiments of education. We are threatened more by internal strife than by invasion of a foreign foe, and propaganda for revolution and communism finds ready listeners among the ignorant and uneducated.

We recommend the submission of proposed constitutional amendments directly to the qualified electors of each State. Until three-fourths of the States shall have ratified such amendments, or until more than one-fourth of the States shall have rejected the same, any State may change its vote. Whenever more than one-fourth of the States shall have rejected an amendment, the rejection shall be final, and there shall be no further consideration of such amendment by the States. Proposed amendments shall not become operative unless ratified within 7 years from the date of their submission.

We advocate adequate preparation for national defense and, in case of war, the conscription of capital and labor as well as of manpower.

Except in the event of attack or invasion the authority of Congress to declare war shall not become effective until confirmed by a majority of all votes cast thereon in a Nation-wide referendum. Congress may by law provide for the enforcement of this section.

Whenever war is declared the President shall immediately conscript and take over for use by the Government all the public and private war properties, yards, factories, and supplies, together with employees necessary for their operation, fixing the compensation for private properties temporarily employed for the war period at a rate not in excess of 4 percent based on tax values assessed in the year preceding the war.

We are gratified to be able to extend to the Nye senatorial committee, which laid bare the ramifications of the traffic in arms, our sincere appreciation of their achievements, and urge that this be followed up by legislation which will carry out the recommendations of the committee.

We approve the law which to some extent makes provision for preserving the neutrality of this Nation in the event of war between other nations, but recommend that its provisions be still further fortified by making it impossible for a small coterie of individuals to affect the policies of our Government in favor of or against any belligerent.

We believe in keeping the United States free from entangling alliances with foreign nations. We further declare that we will oppose, with all honorable means at our command, our country's definite entrance into the League, the World Court, or any other movement of a similar nature which would tie the hands of the Nation and prevent its acting in international affairs unfettered.

We approve of the Johnson law, which provides that no loans shall hereafter be made to foreign countries which have repudiated their debts to us. These nations have expended sums vastly in excess of the amounts they owe us for purposes of increased armaments in preparation for new wars.

I have read some of the leading declarations of policy of this society. I could go on at great length, because I have the bylaws and the purposes of the organization, but the time allotted to me does not permit. Not all the things advocated are supported by me, but the vast majority of them I believe in and support.

There have been some misguided, misinformed, or perhaps malicious, individuals who have gone out and spread propaganda. Among these is Fritz Kuhn. He is one of the leading Nazi propagandists in this country, but he has got nothing to do with us, and we certainly want nothing to do with him.

Mr. DICKSTEIN. Mr. Chairman, will the gentleman yield?

Mr. SAUTHOFF. I will come to the gentleman in a minute. Wait, please.

Just to show how much influence Mr. Fritz Kuhn has, he made a speech to the students of Union College in Schenectady, N. Y., several weeks ago, according to a clipping from the St. Louis Post-Dispatch. After he got through and they voted on what he had spoken about, 294 opposed what he said, 22 agreed with him; but the 22 were mostly boys who considered it a great joke. Fritz Kuhn, however, took it seriously and no doubt reported to Berlin that he had 22 converts.

Mr. Chairman, I now yield to the gentleman from New York [Mr. DICKSTEIN].

Mr. DICKSTEIN. I am very much in sympathy with and interested in the gentleman's statement. I have always considered the Von Steuben Society a very fine group. They are opposed to everything Mr. Kuhn and his crowd stood for.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield 2 additional minutes to the gentleman from Wisconsin.

Mr. DICKSTEIN. In my report of the Committee on Un-American Activities I so stated in as many words. In my present investigation I have found the same conditions to exist and have so stated on the floor.

Mr. SAUTHOFF. I am glad to have that statement from the gentleman from New York.

Inasmuch as the gentleman from New York has been kind enough to give me a contribution, let me give him one. The Jewish people are in a hopeless minority in the United States. To arouse racial prejudice against this minority group would be a crime. The closest, dearest, warmest personal friend I have is a Jew. His home is my home. His family treats me as one of them. I would fight to the last ditch anything that favored of propaganda or persecution against these people. But I would advise our friend and colleague from New York that he should desist from this spreading of racial prejudice, before something happens that neither he, nor we, nor anyone else can control. [Applause.]

Mr. LUDLOW. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. DICKSTEIN].

Mr. DICKSTEIN. Mr. Chairman, I am really surprised at my colleague bringing in the Jewish question or any other religious question. In all my time in this Congress I have never attempted to bring in any racial question. My presentation of these un-American activities has been purely and solely based upon Americanism.

Mr. Chairman, I have heard this remark made before by one or two or more gentlemen. I can count them all on one hand. May I say upon my word of honor as a Member of this House that the Jew, Catholic, or Protestant question never entered my mind. There is only one thing in my mind, and that is to save America for Americans, irrespective of their religion. I have no use for one who is subversive to the Government and not willing to defend it, whether he be Jew, Catholic, or Protestant. I would not go out of my way even for my own people who seek to overthrow this Government, whether you call them Communists, Fascists, or Nazis.

Mr. Chairman, it took me 4 long years to bring this matter to the attention of the Congress and the American people. It has resulted in 35 endorsements from Legions and patriotic organizations which are supporting my position. They agree with me that we must once and for all rid this country of all subversive movements. The Department of Justice has made an investigation, and it has turned over a report to the Attorney General for study. The report, as I understand it, weighs about 200 or 250 pounds and consists of a number of volumes of exhibits or propaganda, which not only attacks Jews but everything and everybody that stands for democracy. From the time I came here 16 years ago I have always fought for the principles of our Constitution.

If the gentleman will come to my committee room and look at the bills my committee is considering for ridding this country of undesirable aliens, he will agree with me this did not come about through the racial question at all. Somebody has interjected the racial question, naming Jews. This is not fair. It is hitting below the belt. I am willing to go as far as you want to go, and I know you are sincere. I was fair enough to tell you what I thought of the Steuben Society, whether you agree with me or not, and I am going to tell you the truth whether it hurts or not. Some Members should be fair and we should all work together for one cause, for one purpose, for one flag, and for one country.

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. CROWE.]

Mr. CROWE. Mr. Chairman, I desire to take a few minutes' time in reference to one particular matter contained in the Treasury and Post Office Departments appropriation bill. I refer to page 47, line 14, and the following language:

Provided, That the character of the exterior construction material for Annex Building No. 3 shall be that contemplated in the original cost estimates for such project.

This refers to the Government Printing Office. I want to give just a brief picture of this building and its location. This extension to the Government Printing Office will be constructed at North Capitol and H Streets. As you know, in the city of Washington the construction of the newer buildings is taking place particularly along Pennsylvania Avenue and in other parts of the city, including Fourteenth Street, which is on Highway No. 50. You will also notice these buildings are being constructed of material which is durable and which will last throughout the ages. This statement cannot be made for buildings constructed of cheaper and less expensive materials, such as brick and concrete.

I appreciate the fact the Government and the Congress is attempting to inject some economy into the Government program. I realize also that the Budget must be balanced; but I do not think it is proper to effect these economies to the extent you reduce a public building to the place where it will not be durable and lasting.

Mr. McFARLANE. Will the gentleman yield?

Mr. CROWE. I yield to the gentleman from Texas.

Mr. McFARLANE. To what kind of material is the gentleman referring, or are you going to cover that later in your remarks?

Mr. CROWE. I expect to; yes, sir. I happen to come from a district in Indiana which is the home of Indiana limestone, which in private enterprise is more extensively used than any other material, particularly in substantial buildings.

The Treasury Department some years ago made a study of building materials and it found that limestone such as we have in Indiana and some of the other States will erode at the rate of one-fifth of an inch in 225 years. Therefore, when you construct a building of material such as that you will have a building which will be there for all time. However, when you construct a building of that material you would not put a cheap roof on the building, neither would you put an inferior foundation under the building. Therefore, in the interest of economy if you would not do the latter two things you would not surface a building with an inferior or cheap material.

We speak of economy, but in my district we have had to spend many thousands of dollars for relief and for work relief, because our stone industry was at one time down to 6 percent of normal. Only 6 men were working where 100 had worked previously. Therefore we have had relief work there in generous amounts. We have been compelled to resort to made work to keep many hundreds of our good people from starving, which in turn has kept our merchants from going into bankruptcy. Why not use this money to promote something useful and helpful, something which would be economically sound, and let us have a revival of business in the communities where the stone business has not yet come back? I find that in the first 10 months of 1937, as compared with the same months in 1934, the use of brick increased 282 percent; of lumber, 197 percent; and of steel,

92 percent, while there has been practically no increase in the use of stone in the United States, and this applies to marble and granite as well as limestone. Why not help these industries and at the same time make and keep this Nation's Capital the most beautiful capital in the world? I cannot see use for economy to the extent that, after spending many millions and billions of dollars, we commence to economize by constructing buildings which are not substantial and lasting. False economy in the end is waste and loss. We may well economize in the number of things created; however, each structure should be well done and with the best materials obtainable, durability, strength, general utility, and beauty combined.

I point with pride to the beautiful Archives Building, containing all these attributes above mentioned, as well as other buildings on Pennsylvania Avenue which are constructed of Indiana limestone.

Eighteen State capitols are built of Indiana limestone, as well as most buildings of loft in most large cities of the United States.

Mr. LUDLOW. Mr. Chairman, I yield 10 minutes to the gentleman from Texas [Mr. MCFARLANE].

Mr. MCFARLANE. Mr. Chairman, we have listened with a great deal of interest to the splendid addresses this afternoon on various and sundry subjects, but I want to get back now for a few minutes to the subject which apparently lies nearest to the hearts of those who are in charge of the administration of our laws and who have the responsibility of pulling us out of this recession, in the midst of which we find ourselves. I believe in order to do this we had better review a little bit of history and see just where we are, in order to better understand the situation and avoid the mistakes of the past in providing a remedy to the conditions confronting us at this time.

FARMERS RESPONSIBLE FOR ANTITRUST LAW

You remember it was due largely to the farmers of America, the Populists, as we called them, the Grange movement, the Farmers' Union, and other farm organizations in the early eighties, as Mr. Jackson stated the other day, that the first antitrust law, the Sherman Act, was passed.

This legislation was brought forward in 1889 and finally became a law in 1890; and was known as the Sherman Act. Its antitrust provisions read:

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding 1 year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding 1 year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding 1 year, or by both said punishments in the discretion of the court.

The intent back of that piece of legislation then as now was excellent.

This act above quoted provided that every combination in restraint of trade was illegal and that forbade monopolizing or attempting to monopolize any part of the trade or commerce among the several States.

However, it did not take the monopolies long to organize their forces and have the Supreme Court, the majority of whose appointments they had influenced, to nullify the effect of its provisions.

THE COURT NULLIFIED THE LAW

For example, the first case to reach the Supreme Court after the Sherman Act was the so-called Knight case in 1895 (*United States* v. *E. C. Knight Co.*, 156 U. S. 1).

This case involved the validity of the purchase by the American Sugar Refining Co. of the capital stock of its four principal independent refining company competitors. It was admitted that these five corporations refined at least 98 percent of the sugar of the Nation.

The majority opinion of the Court in this case in part said:

It is true that the bill alleged that the products of these refineries were sold and distributed among the several States, and that all the companies were engaged in trade or commerce with the several States and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfill its function. Sugar was refined for sale, and sales were probably made at Philadelphia for consumption, and undoubtedly for resale by the first purchasers throughout Pennsylvania and other States, and refined sugar was also forwarded by the companies to other States for sale. Nevertheless it does not follow that an attempt to monopolize or the actual monopoly of the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce; and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree. The subject matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the status quo before the transfers; yet the act of Congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations, or conspiracies in restraint of interstate or international trade or commerce.

Justice Harlan wrote a stinging dissenting opinion and after reviewing the agreed statement of fact as to the object of the purchase of the four additional refineries he said:

"The object," the court below said, "in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country." This characterization of the object for which this stupendous combination was formed is properly accepted in the opinion of the court as justified by the proof.

And on this question of restraint of trade or commerce among the several States he quoted from the decision of *Kidd* v. *Pearson* (128 U. S. 1, 20), wherein the Court said:

The buying and selling, and the transportation incidental thereto constitute commerce.

And further the Court said:

Interstate commerce does not, therefore, consist in transportation simply. It includes the purchase and sale of articles that are intended to be transported from one State to another—every species of commercial intercourse among the States and with foreign nations.

In further analyzing the existing sugar monopoly case he said:

We have before us the case of a combination which absolutely controls or may, at its discretion, control the price of all refined sugar in this country. Suppose another combination, organized for private gain and to control prices, should obtain possession of all the large flour mills in the United States; another, of all the grain elevators; another, of all the oil territory; another, of all the salt producing regions; another, of all the cotton mills; and another, of all the great establishments for slaughtering animals and the preparation of meats. What power is competent to protect the people of the United States against such dangers except a national power—one that is capable of exerting its sovereign authority throughout every part of the territory and over all the people of the Nation?

And Justice Harlan then, as now, might have gone on and named many of the articles we daily purchase which are in truth and in fact manufactured and sold in clear violation of the plain letter of the antitrust laws.

MERGERS AND CONSOLIDATIONS RUN WILD

With a majority of the Supreme Court of reactionary frame of mind, as shown by their decisions, after the Knight deci-

sion the monopolies ran wild and, as stated in Mr. Myron W. Watkins' Mergers and the Law, on page 34:

> The idea seems to have become prevalent that this decision precluded any application of the Federal Antitrust Act to corporate consolidations, as such, no matter how extensive they might be. And therein rests the true importance of the Knight case. It was acted upon generally as a carte blanche to consolidation, and in the decade following the decision there occurred such a flood of mergers in all lines of industry, from glue making to steel manufacture, as has not been witnessed in any other like period before or since.

It is recognized that under our attempted antitrust legislation since 1890, for convenience, we may divide the periods into three parts, namely, 1890 to 1904, 1904 to 1911, and from 1911 to date.

THE NORTHERN SECURITIES CASE

As above pointed out the Knight decision turned loose the monopolies and nullified the affects of the farmers and laborers of the Nation who had fought for the enactment of the antitrust laws to control monopoly. The monopolies as shown by the court decisions had their own way until President Theodore Roosevelt stepped in and through his appointments to the Court and through a vigorous antitrust campaign, tried to curb them with the result in 1904 in the *Northern Securities Co.* v. *The United States* (193 U. S. 197), the consolidation of these three important railroads was blocked. In this case a financial group interested in the Union Pacific was trying to secure control of the Northern Pacific and the Great Northern railroads to monopolize the transportation in that area, the Court in this suit held:

> What the Government particularly complains of is the existence of a combination among the stockholders of competing railroad companies which in violation of the act of Congress restrains interstate commerce through the agency of a common corporate trustee designated to act for both companies in restraining competition between them. Independently of any question of the mere ownership of stock or of the organization of a State corporation, can it in reason be said that such a combination is not embraced by the very terms of the Antitrust Act?

And so the Court left them where it found them and the merger was not permitted.

The Court in this case was divided three ways, three Justices concurring with Justice Harlan, a liberal, who wrote the official majority opinion, while Justice Brewer concurred in the conclusion but disagreed sharply in respect to the grounds for the judgment. The remaining four Justices were opposed to the condemnation of the Northern Securities Co. and two separate opinions of dissent were filed, so thus, because of the three-way split in the Court, the masses of the people were able to get a break, however, in that decision through Justice Harlan, one of the greatest Justices who ever sat on the Court, really followed the antitrust law, according to the original intent and purposes of the people and the Congress in framing the act, when he said:

> That the act is not limited to restraints of interstate trade that are unreasonable in their nature, but embraces all direct restraints imposed by any combination upon such trade. That every combination which would extinguish competition between otherwise competing railroads engaged in interstate commerce is made illegal by the act. That combinations even among private manufacturers or dealers whereby interstate commerce is restrained are equally embraced by the act.

THE RULE OF REASON AND "OIL"

If the Supreme Court had followed the decision in this case, as above quoted, we would not have the monopolies existing throughout the Nation today in almost every line of industry, controlling a large part of the business done in the Nation. But the thought expressed in this decision was soon discarded. President Theodore Roosevelt, in trying to compromise with big business, sent messages to the Fifty-ninth and Sixtieth Congresses, stating that the decision in the Northern Securities Co. case was too severe and these messages to Congress were heralded in the press throughout the Nation, and this got the desired results for big business, and thus with this backing the Court as then constituted went reactionary again and in the next guess they took at the law in *Standard Oil Co.* v. *United States* (22 U. S. 1 (1911)), the Court for the first time set forth their famous rule of reason for holding with big business.

In this case the Standard Oil Co. had increased its capital stock in 1899 by exchanging its shares for those of 19 other companies, which together controlled some 64 additional subsidiary companies, and through them the Government charged that this combination had obtained a complete mastery in those products.

In this case Chief Justice White, in announcing his famous rule of reason, in part said:

> Although the statute makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete, it indicates a consciousness that the freedom of the individual right to contract, when not unduly or improperly exercised, was the most efficient means for the prevention of monopoly.

In other words, it seemed clear that the Supreme Court had rejected the interpretation of the statute which, as has been seen, prevailed in the lower courts. Whenever or not this achievement is properly to be accredited to the adoption of the rule of reason, there is no occasion to argue.

JUSTICE HARLAN EXPOSES JUDICIAL LEGISLATION

Justice Harlan, in a well written dissenting opinion containing 26 pages, carefully reviewed the antitrust decisions from the enactment of the Sherman Act in 1890 to 1911 and carefully pointed out how strongly big business had tried to force the Supreme Court to write into the law by judicial legislation the so-called rule of reason without success.

Justice Harlan also carefully traces the record and points out how big business tried to have the Congress amend the Antitrust Act, having failed to get control of the Supreme Court at the time to nullify it by judicial legislation.

He quotes from the adverse report made in 1909 by Senator Nelson on behalf of the Senate Judiciary Committee in reference to a certain bill offered in the Senate which proposed to amend the Antitrust Act and write into the law the question as to whether or not any agreement or combination or contract was reasonable or unreasonable. In this report Senator Nelson states:

> The Antitrust Act makes it a criminal offense to violate the law, and provides a punishment both by fine and imprisonment. To inject into the act the question of whether an agreement or combination is reasonable or unreasonable would render the act as a criminal or penal statute indefinite and uncertain, and hence, to that extent, utterly nugatory and void, and would practically amount to a repeal of that part of the act. And while the same technical objection does not apply to civil prosecutions, the injection of the rule of reasonableness or unreasonableness would lead to the greatest variableness and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case and there would be as many different rules of reasonableness as cases, courts, and juries. What one court or jury might deem unreasonable another court or jury might deem reasonable. A court or jury in Ohio might find a given agreement or combination reasonable, while a court and jury in Wisconsin might find the same agreement and combination unreasonable. In the case of *People* v. *Sheldon* (139 N. Y. 264), Chief Justice Andrews remarks: "If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing." To amend the Antitrust Act, as suggested by this bill, would be to entirely emasculate it, and for all practical purposes render it nugatory as a remedial statute. Criminal prosecution would not lie and civil remedies would labor under the greatest doubt and uncertainty. The act as it exists is clear, comprehensive, certain, and highly remedial. It practically covers the field of Federal jurisdiction, and is in every respect a model law. To destroy or undermine it at the present juncture, when cobinations are on the increase, and appear to be as oblivious as ever of the rights of the public, would be a calamity. The result was the indefinite postponement by the Senate of any further consideration of the proposed amendments of the Antitrust Act.

Justice Harlan further points out in his dissenting opinion in the Standard Oil Co. case that Chief Justice White now delivering the opinion of the majority apparently had an entirely different conception of the antitrust statute in the

dissenting minority opinion in Northern Securities and Freight Rate cases:

In the opinion delivered on behalf of the minority in the *Northern Securities case* (193 U. S. 197), our present Chief Justice referred to the contentions made by the defendants in the Freight Association case, one of which was that the agreement there involved did not unreasonably restrain interstate commerce, and said, "Both these contentions were decided against the association, the Court holding that the Antitrust Act did embrace interstate carriage by railroad corporations, and as that act prohibited any contract in restraint of interstate commerce, it hence embraced all contracts of that character, whether they were reasonable or unreasonable." One of the Justices who dissented in the Northern Securities case in a separate opinion, concurred in by the minority, thus referred to the Freight and Joint Traffic cases: "For it cannot be too carefully remembered that that clause applies to 'every' contract of the forbidden kind—a consideration which was the turning point of the Trans-Missouri Freight Association case. Size has nothing to do with the matter. A monopoly of 'any part' of commerce among the States is unlawful."

BUT CHANGE IN THE COURT BROUGHT THE RULE OF REASON AND INTENT JUDICIAL LEGISLATION

However, after the death of Chief Justice Fuller and the resignation of Justice Moody and his appointment as Chief Justice and the addition of Justices Van Devanter and Lamar gave big business control of the Court again, and the minority became the majority, and their program of judicial legislation has continued from that date until this administration.

In the same term of Court in the *American Tobacco Co. case* (221 U. S. 106 (1911)) the Court reemphasized the fact that the form of the consolidation was immaterial and both of these cases made clear the intent of the promoters and perpetrators therein was made the criterion of the legal status of the corporate consolidation. The true significance of the rule of reason as set forth in these two cases and apparently continuously followed since then by the Court is that the Court will use the broadest judicial consideration of the facts in changing the intent of the parties and if illegal intent is proven to the Court's satisfaction by the Government, then under those circumstances no benevolence of purpose or effect will relieve the business merger from liability under antitrust law. In the tobacco case they had merged their company with 65 American corporations who had 59 subsidiary corporations, together with two English corporations and 29 individuals, were known as defendants in this case. It takes nearly five pages of the Supreme Court Reports to name the different defendants. Yet, Chief Justice White pulled them through with his rule of reason and the Court's program of enacting legislation by judicial decisions, thus doing what the Congress had refused to do, kept big business intact.

THE DU PONT CASE

A review of the different decisions from that date (1911) makes interesting reading. The Du Pont case reached the Supreme Court in 1918. In this case the Du Ponts had been consolidating all competitors or driving them out of business, and otherwise rather successfully since the turn of the century. But the Buck-Eye Powder Co., objecting to their tactics, brought suit under the antitrust statute. The records show the Du Pont companies and their subsidiaries controlled 64 percent of the trade in black blasting powder, 72 percent of the trade in saltpeter blasting powder, and 72 percent of the business in dynamite, 73 percent of the business in black sporting powder, and 100 percent of the business in smaller military and ordnance powder, which of course was the biggest business of all, and although the Buck-Eye Powder Co. was supposed to have won in this suit and the decree was supposed to have divided up the Du Pont Co., they still go merrily on controlling the powder business.

THE NATIONAL CASH REGISTER CASE

The National Cash Register case, *United States* v. *Patterson* (222 Fed. 599 (1915)), is interesting from several angles.

In this case the Cash Register Co. was organized in 1892, and at the time the Government filed suit in 1912, it did approximately 95 percent of the cash register business in the United States. Its dominant position in the industry was found to have been acquired in the years prior to 1907, by means of practices tending to exclude competitors from the trade, as set forth in the Government's indictment, as follows:

(1) Bribing employees of competitors to secure commercial secrets.
(2) Bribing employees of express and railway companies to disclose information about competitor shipments.
(3) Spying upon competitors and their salesmen through sales agents of the National Cash Register Co.
(4) Interference with sources of credit and supplies relied upon by competitors.
(5) Unfair sales methods.
(a) Disparagement of competitors' products and business integrity to their customers and prospective customers.
(b) Inducing breach of sales contracts made by competitors.
(c) Manufacturing and offering for sale "knockers."
(d) Tampering with mechanism of competitors' products in hands of buyers.
(6) Threats, not bone fide, of infringement suits against competitors and their customers.
(7) Actual institution of spurious litigation.
(8) Organizing bogus independents.
(9) Enticing employees from competitors.
(10) Acquiring patents upon novel features of competitors' products, developed by such competitors.
(11) Authorizing and encouraging use by its agents of other unfair means of exterminating its competitors.

The Court found in some, if not all, of these practices the defendant had been successful in driving out their competitors. This is another typical illustration of where the Government had fought the case through the lower courts to the Supreme Court, and due perhaps to the weakness of the personnel of the Department of Justice, entered into one of their many famous consent decrees, in which the guilty monopolies go free and proceed to carry on their lucrative business unmolested.

THE CORN PRODUCTS REFINING CO. CASE

The *Corn Products Refining Co. case* (234 Fed. 964 (1916)), is another illustration of where this company was operating on a monopolistic scale, processing 92 percent of the corn ground, and at the time had a strong influence in both the glucose and starch markets. While they were dissolved under this decree, it seems they are still maintaining their influence, as shown by the price the farmers receive for their products contrasted with the prices the monopolies get for their products from the public.

THE UNITED STATES STEEL CO. CASE

The *United States Steel Co. case* (251 U. S. 417), which company combines the three groups known as the Morgan, Carnegie, and Moore groups which show a combination of some 180 supposedly independent corporations under which business control they controlled from 80 to 95 percent of the entire steel output of the country. The Court excuses their restraint of trade and monopoly on the ground of extenuating circumstances in that some of the companies had already been almost busted by them, and those merely had to be taken over and the rest were excused by the Court on the ground that they were favoring their competitors and customers. It seems that after they secured a monopoly of the steel business they decided to dress up and have the appearance of being lily white. One of the additional points and significance is that the Supreme Court took the position that a corporation consolidation formed in violation of the antitrust laws may, by reforming itself and business policies, remove itself from the penalties of the law. It must be remembered, too, that by this time the Court was overwhelmingly reactionary minded, and their decisions favoring the monopolies were openly and notoriously repudiating all previous decisions to the contrary.

It will be remembered, in this case, that the Steel Trust wanted complete control and wanted to take over the Tennessee Coal & Iron Co., and in the midst of a panic or depression (1907) the steel company bargained with President Theodore Roosevelt to be permitted to take over the Tennessee Coal & Iron Co., and he gave his approval. You will remember, and history records, that soon thereafter the money panic was eased by the owners of the Steel Trust, who also largely controlled the money market.

Justices Day, Pitney, and Clark, in a well-written dissenting opinion bitterly condemned this gigantic steel monopoly, and in their decision, in part, said:

For many years, as the record discloses, this unlawful organization exerted its power to control and maintain prices of pools, associations, trade meetings, and as the result of discussion and agreements at the so-called Gary dinners, where the assembled trade opponents secured cooperation and joint action through the machinery of special committees of competing concerns, and by prudent provision took into account the possibility of defection and the means of controlling and perpetuating that industrial harmony which arose from the control and maintenance of prices.

It inevitably follows that the corporation violated the law in its formation and by its immediate practices. The power thus obtained from the combination of resources almost unlimited in the aggregation of competing organizations had within its control the domination of the trade and the ability to fix prices and restrain the free flow of commerce upon a scale heretofore unapproached in the history of corporate organizations in this country.

These facts established, as it seems to me they are by the record, it follows that if the Sherman Act is to be given efficacy there must be a decree undoing so far as is possible that which has been achieved in open, notorious, and continued violation of its provisions. * * *

* * * Its total assets on December 31, 1913, were in excess of $1,800,000,000; its outstanding capital stock was $868,583,600; its surplus $151,798,428. Its cash on hand ordinarily was $75,000,000; this sum alone exceeded the total capitalization of any of its competitors.

MONOPOLIES STILL THRIVE

It must be remembered that the Steel Trust, the Farm Machinery Trust, the Meat Packing Trust, the Radio Trust, and the other trusts as pointed out in some of the many cases that have been carried to the Supreme Court and condemned by them, are now all back before us in a thriving monopolistic condition controlling their various fields of activities awaiting our action. The question is, What does this Congress expect to do with the monopolistic situation existing in the Nation today that controls the prices on almost everything the consumer buys?

Under the last three Republican administrations the monopolists all increased their strangle hold upon the country. Under this administration, under our Democratic platform of 1932, we promised the people the following:

THE ANTITRUST PLANK OF 1932

We advocate strengthening and impartial enforcement of the antitrust laws, to prevent monopoly and unfair trade practices, and revision thereof for the better protection of labor and the small producer and distributor.

TRIPLE A AND N. R. A.

In keeping with our promise, we enacted legislation in the Triple A, the N. R. A., and other pieces of legislation exempting these important fields of endeavor from the provisions of the antitrust law. It was thought that by this method we would better be able to get along with the monopolists. Let us look at the results. The monopolists took charge of the N. R. A. and largely wrote the codes under which it was administered. Not being satisfied with the results obtained, its constitutionality was attacked and carried to the Court that they knew was anti-New Deal, with the result the N. R. A. and Triple A were declared unconstitutional.

ANTITRUST PLANK OF 1936

In 1936 the Democratic platform on monopoly and concentration of economic power provides:

Monopolies and the concentration of economic power, the creation of Republican rule and privilege, continue to be the master of the producer, the exploiter of the consumer, and the enemy of the independent operator. This is a problem challenging the unceasing effort of untrammeled public officials in every branch of the Government. We pledge vigorously and fearlessly to enforce the criminal and civil provisions of the existing antitrust laws, and to the extent that their effectiveness has been weakened by new corporate devices or judicial construction, we propose by law to restore their efficacy in stamping out monopolistic practices and the concentration of economic power.

THE PRESIDENT SPEAKS

In keeping with the Democratic pledge to the people, the President in his message to this session of Congress on monopolies, said:

"There are practices which most people believe should be ended. They include tax avoidance through corporate and other methods, which I have previously mentioned; excessive capitalization, investment write-ups, and security manipulations; price rigging and collusive bidding, in defiance of the spirit of the antitrust laws by methods which baffle prosecution under the present statutes. They include high-pressure salesmanship, which creates cycles of overproduction within given industries and consequent recessions in production until such time as the surplus is consumed; the use of patent laws to enable larger corporations to maintain high prices and withhold from the public the advantages of the progress of science; unfair competition, which drives the smaller producer out of business locally, regionally, or even on a national scale; intimidation of local or State government to prevent the enactment of laws for the protection of labor by threatening to move elsewhere; the shifting of actual production from one locality or region to another in pursuit of the cheapest wage scale."

The enumeration of these abuses does not mean that business as a whole is guilty of them. Again, it is deception that will not long deceive to tell the country that an attack on these abuses is an attack on business.

HON. ROBERT JACKSON ON MONOPOLIES

In further reference to carrying out this promise, Hon. Robert Jackson, Assistant Attorney General of the United States, in charge of the enforcement of the antitrust laws, has recently made numerous speeches on monopolies, urging strengthening the law, in which in a speech, he in part stated:

If business is going to do its part to bring about revival, business must boldly reduce prices to the point necessary to cause a normal flow of goods to the consumer. Big business is not today permitting the competitive system to work. Fortified by high corporate surpluses, big business refuses to supply the normal requirements of the consumer, but will sell only to those few who are willing to pay the prices fixed last spring when business was booming. Although the consumer's income is about a third less than it was in 1929, big business is asking the consumer to pay more for their goods than they did in 1929. If a consumer wants to build a home, he must pay 11 percent more for cement, 5 percent more for steel, 4 percent more for lumber than he did in 1929. For some building materials he must pay even 100 percent more than he did in 1929. How can we have a housing program under such conditions? * * *

The individual farmer felt a terrific disadvantage in bargaining with powerful combinations. He could not choose the time to sell his produce. He had to dispose of it in order to pay his taxes, or buy his winter clothing, or meet his machinery notes. He could not bargain as to price, but received a proposition which he could take or leave. He became fearful of his ability to survive, hemmed in on both sides by industrial combinations whose power and resources overwhelmed him. The antitrust laws promised him relief. After 47 years what relief has he had?

The simple fact is that the farmer, except to the extent that he buys or sells cooperatively, is in exactly the position today that the grangers of 1890 feared he would be.

Let us consider the farmer as an individual seller. When the farmer attempts to sell his produce he has no bargaining power that compares with that possessed by his only buyers. He finds a concentrated control and ownership of the only channels by which his produce may reach its ultimate market. Thirteen manufacturers bought 64 percent of the 1934 tobacco crop; three manufacturers alone bought 46 percent of the 1934 crop. I take it no one will doubt that when three buyers take 46 percent of a crop, those three are in a position to fix the price. They would be strange persons if they did not take advantage of the power they have. Thirteen companies bought 65 percent of the commercial wheat crop in the fiscal year 1934 and 1935, and here again three of those companies bought 38 percent of the commercial crop. Ten packers in 1934 bought 51 percent of the cattle and calves and 37 percent of the hogs. Twelve milk companies bought 13 percent of the commercial fluid milk production of 1934. Thus big business has thrust itself between the producer and the consumer and is in a position to dictate terms to each.

LET US HAVE A NEW DEAL

It seems clear that this Congress should immediately take stock of the situation and work out amendments to our antitrust laws that will correct the conditions court decisions clearly show exist and need correcting. The people have spoken in increasing majorities in the past three elections—1932, 1934, 1936—and have said by their votes that the New Deal should go forward. We have the largest majority in the House and Senate ever given any party in the history of the Nation. The President has repeatedly urged us to enact antitrust legislation that will cur bthe monopolies. We now have a majority of the Supreme Court apparently of liberal frame of mind. It seems the stage is all set for action. Why should the Congress further delay to do its part to relieve the great masses of the people of the burdens inflicted upon them by the monopolists? It will not be any easy task to work out legislation that will correct the known existing

evil. For example, since the enactment of the Sherman and Clayton Acts there have been many amendments to the antitrust laws giving special groups special favors. Each in its own way weakening the effect of the antitrust law and strengthening the effect of the monopolies. Let me briefly refer to some of these special acts giving special favors to special groups:

SPECIAL FAVORS TO SPECIAL GROUPS

The Federal Reserve Act gives the banking group many privileges not enjoyed by any other group.

The Clayton Act, while enacted for the purpose of exempting trade unions and the agricultural organizations from provisions of the antitrust laws, the monopolists have used this act for the contrary purpose. What we need now is to strengthen this act to give it the effect Congress originally intended it should have.

The Shipping Act permits the fixing of rates and making similar arrangements of traffic and steamship lines.

The Webb-Pomerene Act permits monopolies in export trade.

The Transportation Act permits consolidation and mergers of transportation lines under the approval of the Interstate Commerce Commission.

The Packers and Stockyards Act transferred enforcement of this act from the Federal Trade Commission to the Department of Agriculture.

THE COMMUNICATIONS MONOPOLY

The Communications Act places the jurisdiction of our communications, including telegraph, telephone, and radio, under the complete jurisdiction of this Commission. The record discloses that it was the intention of Congress to clearly protect the people by preserving competition, yet the effect of this act so far has clearly been to foster and perpetuate the known existing monopolies in this entire field. Let us first take the telegraph. The Department of Justice, on December 1, 1937, filed suit against the Western Union Co. and Postal Telegraph Co., alleging that the Western Union Co. controls 60 percent of the domestic telegraph business, while the Postal Telegraph controls 20 percent and the Radio Corporation of America et al. controls the remainder. The records clearly show the Government's suit is sound and well taken, yet the facts disclose that apparently they were jumping on a cripple. Western Union and Postal Telegraph came back and filed a suit with the Federal Communications Commission on December 20, 1937, requesting a 15-percent increase on all their rates and charges for domestic messages, except as follows:

Rates for special types of greeting and other messages which carry a rate of 25 cents for messages of fixed text and of 35 cents for 15 words and 2½ cents for each word in excess of 15 words for messages of sender's own composition irrespective of distance, rates for press messages, and rates for stock and commercial news commonly referred to as CND service.

This raises a very interesting question, for the telegraph companies under this petition are now requesting a 60 percent increase on the prices of all Government messages and business transactions, regardless of the cost of this service to them and the many benefits received by them from the Government. For example, as shown by the Government's answer to this petition, the Government has given in cash and important legislation enacted for the benefit of the telegraph companies, of which they have availed themselves, an amount equal to many millions of dollars. Congress immediately after the close of the Civil War had legislation pending to establish Government telegraph lines for use, the same kind existing in every major foreign government in the world, and the telegraph companies came in and with their rosy promises, and so forth, were able to convince the Congress that they would cooperate with the Government, and in lieu thereof the Post Roads Committee of 1866 was enacted, which gave the telegraph companies many favorable rights not enjoyed by other lines of business. Their petition for increase in rates at the hand of the Government and all messages affecting directly the people again raises an interesting question as to whether the Government should not at this time take over the telegraph lines. Of course, the radio and telephone companies are sitting back and laughing up their sleeves, and would be greatly benefited both directly and indirectly if this increase in rates goes through.

THE FEDERAL RADIO ACT OF 1927

The Federal Radio Act of 1927 amply protected radio from monopolistic practices, as follows:

SEC. 13. The licensing authority is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, after this act takes effect, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person, firm, company, or corporation for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such firm, company, or corporation.

THE FEDERAL COMMUNICATIONS ACT OF 1934

However, apparently the radio authorities were well satisfied with the Communications Act of 1934, which gave them several favorable loopholes they did not have under the previous act. For example, section 313 provides:

APPLICATION OF ANTITRUST LAWS

"SEC. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

The existence of the present radio monopoly is due to the action of the Federal Communications Commission both by their acts of omission and commission as shown by the records of their own Department.

Investigation resolutions have been pending before the Congress both in the House and Senate for the past three sessions of Congress. The Senate Interstate Commerce Committee reported favorably their resolution to investigate the Federal Communications Commission last session but nothing further has been done regarding same. For some unexplained reason no action has yet been taken by the House Rules Committee on reasons given as to why the different resolutions pending for investigation before their committee have remained unacted upon.

[Here the gavel fell.]

Mr. LUDLOW. Mr. Chairman, I yield the gentleman 5 additional minutes.

Mr. McFARLANE. I do not like to take up too much time of the House on this subject, but I do want to make a few remarks in closing, and this is the thought I want to leave with you.

With every clear channel on the radio dial owned or controlled by this radio monopoly, contrary to our laws; with 93 percent of the power that goes into radio broadcasting controlled by this group; with every station beyond 1,000 watts in power controlled under this set-up; with exclusive contracts with these radio monopolies; and with the American Telephone & Telegraph Co. in chain broadcasting, under the patent control and cross-licensing agreements between these monopolies, R. C. A. and A. T. & T., and the newspaper-owned radio stations throughout the Nation, they control

and dictate largely through their patent tie-up and set-up the molding of public opinion in this country. I know and you know how powerful that control is. They can censor the kind and character of remarks that a Congressman makes.

Mr. DICKSTEIN. Mr. Chairman, will the gentleman yield?

Mr. McFARLANE. Yes; I yield.

Mr. DICKSTEIN. Can they not do that under the law, have they not a right to do that? Did not Congress give them that power? I was a Member of this House when we created that Commission, and did we not give them the power to censor any statement that goes over the air? Is not that the right thing to do on both sides? I am not appealing on behalf of the R. C. A. or anybody else.

Mr. McFARLANE. In that regard I have searched in vain for the censorship power which they have asserted and I cannot find it in the law. They can require the filing of these speeches as they see fit. I have had that experience in my district. I have had the most vicious kind of attacks made upon me only to find that not a single solitary speech was filed with the broadcasting station by the opposition, while my speeches were required to be filed hours before the broadcast or I was not allowed to go on the air.

Mr. DICKSTEIN. To that extent I agree with the gentleman. That is what I am coming to.

Mr. McFARLANE. But Congress never intended to give them that power and the law does not give them power to supervise or censor our remarks, but they have usurped that power and the Commission here has apparently condoned it. However, that is a small part of the entire part of the program now being permitted by the present Communications Commission.

In conclusion let me say that the time is ripe for our immediate consideration of legislation to really curb the monopoly existing in this country. Everyone apparently admits they exist. We have promised the people repeatedly we will do something about it. The monopolistic control of prices by big business is now in effect throughout the Nation. They are today disregarding the economic conditions of the country, the cost of production, and the existing unemployment, to a greater extent and degree than ever before. They are maintaining their high prices of finished products regardless of the inability of the people to buy or cost of replacing these articles. The Government has spent billions of dollars trying to increase the purchasing power of the great masses of the people only to have the profits thus gained lost by the noncooperating attitude of the monopolistic group.

We must have the cooperation of all parties working together if we are going to be able to overcome the depression in which we now find ourselves.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. LUDLOW. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. GREENWOOD, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill H. R. 8947, had come to no resolution thereon.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. RUTHERFORD, for Friday, on account of important business.

To Mr. ATKINSON, for 5 days, on account of being subpenaed as witness in a criminal court.

PANAMA RAILROAD CO.

The SPEAKER laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Merchant Marine and Fisheries:

To the Congress of the United States:

I transmit herewith, for the information of the Congress, the Eighty-eighth Annual Report of the Board of Directors of the Panama Railroad Co. for the fiscal year ended June 30, 1937.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 13, 1938.*

WORKS PROGRESS ADMINISTRATION

The SPEAKER also laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Appropriations:

To the Congress of the United States:

I transmit herewith, for the information of the Congress, the report of the Works Progress Administrator on progress of the Works Program, placing primary emphasis on activities of the first 10 months of the calendar year 1937.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 13, 1938.*

EXTENSION OF REMARKS

Mr. SWEENEY. Mr. Speaker, I ask unanimous consent to extend my remarks and include a communication from the Cleveland Building Trades Council, a synopsis of a Build American Movement.

The SPEAKER. Is there objection?

There was no objection.

Mr. TABER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include therein certain tables.

The SPEAKER. Is there objection?

There was no objection.

Mrs. ROGERS of Massachusetts. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include therein a short letter from a constituent of mine who is a tremendous worker for peace and who realizes the great ideal embodied in my colleague's [Mr. LUDLOW's] resolution and his great sincerity of purpose, just as I do, but who felt the method would not be helpful. A peace resolution has been a dream of Mr. LUDLOW's for years.

The SPEAKER. Is there objection?

There was no objection.

Mr. DICKSTEIN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. McFARLANE. Mr. Speaker, I make the same request and to include certain excerpts.

The SPEAKER. Is there objection?

There was no objection.

ADJOURNMENT

Mr. LUDLOW. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 22 minutes p. m.) the House adjourned until tomorrow, Friday, January 14, 1938, at 12 o'clock noon.

COMMITTEE HEARINGS

COMMITTEE ON THE DISTRICT OF COLUMBIA

Mr. RANDOLPH'S subcommittee on public utilities of the Committee on the District of Columbia will meet Friday, January 14, 1938, at 10:30 a. m., in room 362 (caucus room), House Office Building. Business to be considered: H. R. 6811, streetcar capacity; H. R. 6862, maximum-fare investigation.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

There will be a meeting of Mr. CROSSER'S subcommittee of the Committee on Interstate and Foreign Commerce at 2 p. m., Friday, January 14, 1938. Business to be considered: Continuation of hearing on House Joint Resolution 389, Withrow resolution.

COMMITTEE ON IMMIGRATION AND NATURALIZATION

There will be a meeting of the Committee on Immigration and Naturalization in room 445, House Office Building, at

10:30 a. m., on Wednesday, January 19, 1938, for the public consideration of H. R. 8562 and H. R. 8569.

COMMITTEE ON PENSIONS

The Committee on Pensions will hold a hearing at 10:30 a. m., Friday, January 21, 1938, on H. R. 6289, granting a pension to certain soldiers, sailors, and marines for service in the War with Spain, the Philippine Insurrection, and the China Relief Expedition, and H. R. 6498, granting pensions to persons who served under contract with the War Department as acting assistant or contract surgeon between April 21, 1898, and February 2, 1901.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

988. A letter from the Acting Secretary of the Treasury, transmitting a draft of a proposed bill to transfer to the Secretary of the Treasury a site for a quarantine station to be located at Galveston, Tex.; to the Committee on Public Buildings and Grounds.

989. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the fiscal year ending June 30, 1938, for the Department of Agriculture, for salaries and expenses, Forest Service (fighting and preventing forest fires), $1,279,417 (H. Doc. No. 475); to the Committee on Appropriations and ordered to be printed.

990. A letter from the President of the Georgetown Barge, Dock, Elevator & Railway Co., transmitting the Annual Report of the Georgetown Barge, Dock, Elevator & Railway Co. for the year ending December 31, 1937; to the Committee on the District of Columbia.

991. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Department of Justice for the fiscal year 1939, amounting to $2,500, for printing and binding for the Supreme Court (H. Doc. No. 476); to the Committee on Appropriations and ordered to be printed.

992. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the fiscal year ending June 30, 1938, for the Department of Agriculture, for administration of the Sugar Act of 1937, amounting to $39,750,000 (H. Doc. No. 477); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. LUDLOW: Committee on Appropriations. H. R. 8947. A bill making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1939, and for other purposes; without amendment (Rept. No. 1666). Referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. LUDLOW: A bill (H. R. 8947) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1939, and for other purposes; to the Committee of the Whole House on the state of the Union.

By Mr. MAAS: A bill (H. R. 8948) to liberalize the laws providing pensions for veterans and the dependents of veterans of the Regular Establishment for disabilities or deaths incurred or aggravated in line of duty other than in wartimes; to the Committee on Pensions.

By Mr. SCHAEFER of Illinois: A bill (H. R. 8949) to authorize the construction of a fill along the Illinois shore of the pool of lock and dam No. 26 at Alton, Ill., and for other purposes; to the Committee on Rivers and Harbors.

By Mr. DOXEY: A bill (H. R. 8950) to promote sustained-yield forest management in order thereby (a) to stabilize communities, forest industries, employment, and taxable forest wealth; (b) to assure a continuous and ample supply of forest products; and (c) to secure the benefits of forests in regulation of water supply and stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife; to the Committee on Agriculture.

By Mr. FISH: A bill (H. R. 8951) to amend the Home Owners' Loan Act of 1933 to reduce the rate of interest to 3½ percent, to extend the time of maturity to 25 years, and for other purposes; to the Committee on Banking and Currency.

By Mr. KRAMER: A bill (H. R. 8952) to authorize the President of the United States to include in annual Budgets for the Government expenses an annual appropriation for adult education in evening colleges or evening high schools; to the Committee on Education.

By Mr. SUTPHIN: A bill (H. R. 8953) to amend the Home Owners' Loan Act of 1933, as amended, to reduce the rate of interest to 3 percent, to extend the time of maturity to 25 years, and for other purposes; to the Committee on Banking and Currency.

By Mr. THOMPSON of Illinois: A bill (H. R. 8954) to authorize a preliminary examination and survey of Henderson River and the watershed thereof, in the State of Illinois, for flood control, for run-off and water-flow retardation, and for soil-erosion prevention; to the Committee on Flood Control.

By Mr. TOWEY: A bill (H. R. 8955) to provide for the appointment of an additional district judge for the district of New Jersey; to the Committee on the Judiciary.

By Mr. WHITE of Idaho: A bill (H. R. 8956) to provide for the conservation of the fishery resources of the Columbia River, establishment, operation, and maintenance of one or more stations in Oregon, Washington, and Idaho, and for the conduct of necessary investigations, surveys, stream improvements, and stocking operations for these purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. ROMJUE: A bill (H. R. 8957) to authorize a preliminary examination and survey of the dam at the northern end of Fox Island, in Clark County, in the State of Missouri, for flood control, for run-off and water-flow retardation, and for soil-erosion prevention; to the Committee on Flood Control.

By Mr. SIROVICH: A bill (H. R. 8958) authorizing the coining of United States silver 50-cent pieces in commemoration of the one hundred and fiftieth anniversary of the death of Francois Joseph Paul, Comte de Grasse, admiral of the fleet which aided the armies of General Washington during the American War of Independence; to the Committee on Coinage, Weights, and Measures.

By Mr. GREEN: A bill (H. R. 8959) to supplement the act approved March 2, 1887, by aiding and promoting research in the engineering experiment stations of the colleges established and designated in the several States under the provisions of the act approved July 2, 1862, and the acts supplemental thereto; to the Committee on Agriculture.

By Mr. MARTIN of Colorado: Resolution (H. Res. 401) for the relief of J. William Lee's Sons, Inc., undertakers; to the Committee on Accounts.

By Mr. TAYLOR of Colorado: Joint resolution (H. J. Res. 562) providing an additional appropriation for inquiries and investigations of the Senate for the fiscal year ending June 30, 1938; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GRAY of Pennsylvania: A bill (H. R. 8960) granting an increase of pension to Frank B. Ritzie; to the Committee on Pensions.

By Mr. HALLECK: A bill (H. R. 8961) granting an increase of pension to Hannah A. Wallace; to the Committee on Invalid Pensions.

By Mr. KRAMER: A bill (H. R. 8962) granting a pension to Florence V. Mercer; to the Committee on Invalid Pensions.

By Mr. LAMBETH: A bill (H. R. 8963) for the relief of Marguerite Peedin; to the Committee on Claims.

By Mr. LAMNECK: A bill (H. R. 8964) granting an increase of pension to Amy A. Watson; to the Committee on Invalid Pensions.

By Mr. ROBSION of Kentucky: A bill (H. R. 8965) for the relief of Jackson Howard; to the Committee on Military Affairs.

By Mr. RUTHERFORD: A bill (H. R. 8966) granting an increase of pension to Nelle G. Eckman; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3775. By Mr. COLDEN: Resolution adopted by the Teamsters Joint Council, No. 42, of Los Angeles and vicinity, California, protesting against statements to the effect that labor racketeering and extortion are prevalent in the city of Los Angeles, and asking the President of the United States to assign representatives of the Department of Justice for the purpose of investigating such charges; also that he enlist the aid of the Attorney General in having investigated the activities of antiunion interests; and that the Civil Liberties Committee of the United States Senate investigate the matters mentioned; to the Committee on the Judiciary.

3776. Also, letter from the Conservation Association of Los Angeles County, Calif., calling attention to provisions in Senate bill 2970, for reorganization of the Government departments, considered inimical to southern California, and suggesting certain amendments; also submitting statement concerning the reorganization of executive departments; to the Select Committee on Government Organization.

3777. By Mr. CONNERY: Petition of Local 201, United Electrical and Radio Workers of America (Electrical Industry Employees' Union), of Lynn, Mass., urging Congress, business, and industry to use the power of the government of the people to defeat the purpose of certain interests who wish to profit at the expense of national well-being; to the Committee on the Judiciary.

3778. By Mr. CURLEY: Petition of the New York County Lawyers' Association, New York City, recommending disapproval of Senate Joint Resolution 220, introduced by Senator SHEPPARD, which seeks to amend the Constitution of the United States in relation to taxation of homesteads; to the Committee on Ways and Means.

3779. Also, petition of the New York County Lawyers' Association, New York City, recommending disapproval of House bill 8351, introduced by Mr. LAMNECK, in relation to designating the maintenance of oppressive wages and oppressive hours or oppressive child labor as an unfair method of competition in commerce; to the Committee on Labor.

3780. By Mr. DIXON: Resolution of the Department of Ohio, the American Legion, in convention assembled, requesting that the Navy Department be asked to name one of the new ships to be laid down in 1939, or shortly thereafter, the "Ohio"; to the Committee on Naval Affairs.

3781. By Mr. DORSEY: Petition numerously signed by citizens of Philadelphia, Pa., protesting against the provisions of Senate bill 2970, the reorganization bill, which will permit the transfer of the Forest Service, Biological Survey, and Soil Conservation Service from the Department of Agriculture, and the renaming of the Department of the Interior as Department of Conservation; the signers of this petition respectfully urge specific exemption from transfer, under this bill, of the above-mentioned divisions from the Department of Agriculture, and elimination of the provisions for renaming the Department of the Interior; to the Special Committee on Reorganization.

3782. By Mr. LUTHER A. JOHNSON: Petition of Earl Graham Unit, No. 159, American Legion Auxiliary of Bryan, Tex., favoring House bill 6704, known as the universal service bill; to the committee on Rules.

3783. By Mr. MERRITT: Resolution of the Fourth Assembly District Democratic Club of Jamaica, N. Y., demanding reestablishment of the Naturalization Bureau, heretofore attached to the office of the clerk of the County of Queens, in Jamaica, N. Y.; to the Committee on Immigration and Naturalization.

3784. By the SPEAKER: Petition of the American Indian Federation, Sapulpa, Okla., petitioning consideration of their resolutions dated July 25, 1937, July 29, 1937, and July 30, 1937, with reference to communism; to the Committee on Indian Affairs.

3785. Also, petition of the Winfield Industrial Union Council, Alabama, petitioning consideration of their resolution with reference to unemployment; to the Committee on Appropriations.

SENATE

FRIDAY, JANUARY 14, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Thursday, January 13, 1938, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

CALL OF THE ROLL

Mr. BARKLEY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Clark	Johnson, Calif.	Overton
Andrews	Connally	Johnson, Colo.	Pittman
Ashurst	Copeland	King	Pope
Bailey	Dieterich	La Follette	Radcliffe
Bankhead	Donahey	Lewis	Reynolds
Barkley	Duffy	Lodge	Russell
Berry	Ellender	Logan	Schwartz
Bilbo	Frazier	Lonergan	Schwellenbach
Bone	Gerry	Lundeen	Sheppard
Borah	Gibson	McAdoo	Shipstead
Bridges	Gillette	McCarran	Smathers
Brown, Mich.	Glass	McGill	Smith
Brown, N. H.	Guffey	McKellar	Thomas, Okla.
Bulkley	Hale	McNary	Thomas, Utah
Bulow	Harrison	Maloney	Townsend
Burke	Hatch	Miller	Truman
Byrd	Hayden	Minton	Tydings
Byrnes	Herring	Murray	Vandenberg
Capper	Hill	Neely	Van Nuys
Caraway	Hitchcock	Norris	Walsh
Chavez	Holt	Nye	

Mr. COPELAND. I announce that my colleague [Mr. WAGNER] is much better this morning, but is still detained on account of illness. I ask that this announcement stand for the day.

Mr. GIBSON. I announce that my colleague the senior Senator from Vermont [Mr. AUSTIN] is unavoidably detained from the Senate. I ask that this announcement stand for the day on all quorum calls.

Mr. MINTON. I announce that the Senator from Rhode Island [Mr. GREEN] and the Senator from Delaware [Mr. HUGHES] are absent from the Senate because of illness.

The Senator from Georgia [Mr. GEORGE], the Senator from Oklahoma [Mr. LEE], the Senator from New Jersey [Mr. MOORE], the Senator from Wyoming [Mr. O'MAHONEY], the Senator from Florida [Mr. PEPPER], and the Senator from Montana [Mr. WHEELER] are detained from the Senate on important public business.

Mr. McNARY. I announce that my colleague [Mr. STEIWER] is necessarily absent, and that the Senator from